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THE UNIVERSITY OF ALBERTA

"THESE LEGAL GENTLEMEN": BECOMING PROMINENT IN MANITOBA, 1870-1900

BY

RICHARD ALLAN WILLIE

A THESIS
SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

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THE UNIVERSITY OF ALBERTA

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled "'These Legal Gentlemen': Becoming Prominent in Manitoba, 1870-1900," submitted by Richard Allan Willie in partial fulfilment of the requirements for the degree of Doctor of Philosophy in History.

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To Marilyn

ABSTRACT

Between 1839 and 1900 the legal community in Manitoba became a prominent and permanent fixture in Manitoba life. The achievement was not the product of legal changes alone but was the culmination of a process in which lawyers responded to perceived societal deficiencies and opportunities. In doing so, their impact was neither benign nor undifferentiated. The relationship between these lawyers and their communities both inside and outside the profession, corresponds to four distinct stages of development. During the earliest period (1840-70), the integration of lawyers and community failed because lawyers lacked the appropriate means and the prevailing conditions would not allow it. After 1870, however, the successive adoption of strategies of intrusion, brokerage and consolidation which were well adapted to the economic, political and social realities of each decade, allowed integration to occur more fully. At the same time that the legal profession was becoming prominent in society, individual members of the profession were becoming prominent as well. As the numbers of lawyers grew, both the structure and the style of practice in the profession began to change, while other patterns became routinized. By 1900 the legal profession had matured and its prominent members were responding to the anticipated challenges of practice in the new century.

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LIST OF ABBREVIATIONS

A.A.S.B.	Archives de l'Archevêché St. Boniface.
A.W.C.L.H.	Archives of Western Canadian Legal History.
C.M.S.A.	Church Missionary Society Archives.
H.B.C.A.	Hudson's Bay Company Archives.
H.S.S.M.	Historical and Scientific Society of Manitoba.
P.A.C.	Public Archives of Canada.
P.A.M.	Public Archives of Manitoba.

CHAPTER I

INTRODUCTION

Alexander Begg, a prominent resident of Manitoba and an avid chronicler, wrote shortly after 1870 that "the advent of these legal gentlemen . . . was the commencement of the misery of the people of Winnipeg."[1] Despite the ill-concealed hostility that his caustic remark implies, Begg failed to offer further comment. Begg was, nevertheless, unequivocal in his negative appraisal of the group of recently arrived lawyers. To Begg, these men were unwelcome intruders who threatened to usurp leadership positions once occupied by laymen in Winnipeg. Writing a century later, W. L. Morton was more gentle in his assessment of Manitoba's lawyers. Referring to a period shortly after the turn of the century, Morton found that the most prominent and visible lawyers in the province had become "insiders" in the community.[2] Winnipeg, where many of them resided and practiced, was no longer the dusty frontier village of Begg's day. The entire province, in fact, had taken on a settled appearance. In these circumstances the legal profession, claims Morton, "had increased in number and weight, and wealthy firms and powerful counsel served the grain trade, the railways, and the real estate business with great profit in money and prestige." In addition, he writes, many of "these men in . . . law acquired national reputations and were called to directorships in national firms or to the service of the federal government." Assuming that both Begg and Morton accurately reflected the position that lawyers occupied in two different sets of circumstances, a transition took place, if not in reality, at least in perception. Begg's unwelcome "intruders" became Morton's "insiders."

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[1] Alexander Begg and Walter R. Nursey, Ten Years in Winnipeg (Winnipeg, 1879), p. 31.

[2] W. L. Morton, Manitoba: A History (Toronto, 1957), p. 303.

The scholar wishing to more fully appreciate the context of Begg's cavil is faced with an interpretive conundrum, because historians have demonstrated little interest to date in the activities of lawyers as professionals in the history of the Canadian prairie.[3] The relational aspects of the lawyer's community involvement, their role in prairie urban centers, their collective careers in the legal profession, and finally, their ultimate impact on the region's history has not received serious scholarly examination. The exploits of leaders of the clergy, the mounted police, the entrepreneurial class, agriculturalists and native communities during the formative years of prairie settlement and development have attracted far more attention than lawyers. Many of the names of legal gentlemen who were also politicians are familiar to students of the region's history, but little is known of their legal careers. That historians have generally failed to create images of the Western prairie lawyer is consistent with the situation for other regions in Canada and Canadian historiography in general. In contrast with the Canadian record, British and American historians have included lawyers in the writing of their national histories, and therefore, definitive images of lawyers emerge from their work.[4] The images they have created may be inaccurate or misleading, but nonetheless provide the scholar with an immediate frame of reference.

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[3] Lawyers themselves have shown considerably more interest. For Manitoba, see Dale and Lee Gibson, Substantial Justice (Winnipeg, 1972), and for Saskatchewan, see W. H. McConnell, Prairie Justice (Calgary, 1980). Articles about Alberta lawyers have been infrequent and mostly descriptive. See Wilbur F. Bowker, "The Honorable Horace Harvey, Chief Justice of Alberta," Canadian Bar Review 32 (November 1954):933-81 and 1,118-39; F. C. Jamieson, "Edmonton Courts and Lawyers in Territorial Times," Alberta Historical Review 4 (Winter 1956):3-9; and Alan D. Ridge, "C. C. McCaul, Pioneer Lawyer," Alberta Historical Review 21 (Winter 1973):21-25. Indicating a change, perhaps, is Peter M. Sibenik, "The Doorkeepers: The Governance of Territorial and Alberta Lawyers, 1885-1928" (M.A. thesis, University of Calgary, 1984).

In the history of England, especially during the nineteenth century, the rise of professional classes and the

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[4] A comparison with the two countries, whose legal traditions and experiences in a North American setting are respectively closest to our own, is valid for assessing the relative strengths and weaknesses of our historical writing. In Canada, the law used and the legal structures employed, were almost exclusively British in character and form, but actual legal practice, client relations and the social aspects of the legal fraternity enjoyed a great deal of autonomy from the British model and were in many respects closer to the experience of American lawyers. See Bora Laskin, The British Tradition in Canadian Law (London, 1969), passim.

Industrial Revolution coincide. Legal men, as portrayed by historians, play their part in these movements as a portion of the English middle classes; as a sector of society who were living "at a time when they had, and they knew they had, more power and influence in national life than ever before."[5] Historians have portrayed these lawyers as actively engaged in their characteristic activities of "earning a living, raising the moral tone of society, and social climbing."[6] With a "subtle blend of self-interest and public spirit," they are a "Victorian creation," serving the needs of progressive industrial society, the products of a "classical education," embarked upon the kind of profitable careers that were deemed by polite society as worthy of "gentlemen."[7] Whether the image created by historians is accurate or not, such views taken together serve to buttress a stereotypical image of the nineteenth century British lawyer.

American history is also rife with images of lawyers from colonial times to the present. In the era surrounding the American Revolution, lawyers are depicted acting as political rhetoricians, pamphleteers and statesmen, and conforming to either a Jeffersonian or Hamiltonian mold. In Alexis de Tocqueville's age, legal aristocrats like Daniel

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[5] W. J. Reader, Professional Men: The Rise of the Professional Classes in Nineteenth-Century England (London, 1966), p. i.

[6] Ibid.

[7] Ibid., pp. 2 and 24.

Webster, whose acumen in law and politics was combined with service to an emergent New England commercial industrial elite, is the quintessence of an upper class lawyer.[8] And yet, through the democratic mists of the Jacksonian era, American historians have offered us glimpses of a very different kind of lawyer, the 'circuit rider,'[9] the common man's lawyer, taking justice to the people.

An "independent generalist," the common man's lawyer assumes heroic dimensions with the martyrdom of Abraham Lincoln.[10] The image that remained following his death was that of a frontier-raised, virtuous and gregarious country lawyer who rose to serve with distinction in his country's highest office, largely because of his non-corrupting log cabin origins.[11] Abe's experience is the personification of the self-made man myth, which was a pervasive influence in the Horatio Alger age of the late nineteenth century. In the American West, as well, where an individual's pluck was often tested, the vision of restive and unorthodox frontier justices and equally impermanent lawyers remains strong.[12]

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[8] R. Kent Newmyer, "Daniel Webster as Tocqueville's Lawyer: The Dartmouth College Case Again," American Journal of Legal History 11 (1967):146-47.

[9] There is some disagreement over the accuracy of the image. See David H. Calhoun, "Branding Iron and Retrospect: Lawyers in the Cumberland River Country," in Professional Lives in America: Structure and Aspirations 1750-1850 (Cambridge, Mass., 1965), pp. 59-87.

[10] Jerome S. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (London, 1976), p. 15.

[11] See Ray Ginger, Altgeld's America: The Lincoln Ideal Versus Changing Realities (New York, 1958), especially the prologue.

By the turn of the century waves of immigrants created unprecedented nativist tensions in the United States, while an extensively expanded and altered economy created greater competition in the legal profession. Established 'old-stock' lawyers, responding to these societal pressures, contributed to the formation of an image of the aspiring ethnic lawyer as an ubiquitous and unprincipled pettifogger, an 'ambulance chaser.'[13] On the softer side of interpretation, beginning with the Progressive era, men like Clarence Darrow emerge as militant upholders of justice, defending causes with outstanding courtroom theatrics inspired by liberal convictions in no small measure. That image has been largely tarnished since, however, by lawyers whose courtroom theatre is no less dramatic, but whose moral convictions are elastic at best. Finally, in our age, one of corporate concentration and professional specialization, the impeccably dressed Wall Street lawyer, as power broker, has in image and in reality come to dominate the entrenched enclaves of power in the United States.

Canadian history contains few stereotypes or conspicuous images of lawyers compared to those in Britain or the United States, although occasionally an outstanding judge[14] or an exceptional lawyer-politician[15] is appreciated in an historical context for his legal talent, or for his fraternal associations with other practitioners. Such exceptions are, however, rare. More typically, notorious politicians who are also lawyers are the only ones accorded a status worthy of attention. Even a cursory survey of Canadian historiography leaves one with the impression that all lawyers were actually politicians at heart, the law office being merely a staging platform for a political career, and the bench a retirement benefit for faithful political hacks who, as lawyers, were unable to endure the demands of the political arena. The shadows cast by John A. Macdonald, the Kingston attorney, and Wilfrid Laurier, the advocat from Arthabaska, are impressive shadows indeed when viewed in this light. In our preoccupation with politics, we have failed to properly accord recognition to the hundreds of influential yet not always visible lawyers who contributed in numerous and significant ways to the nation's development. In ways, for instance, most directly related to the legal system, client services, and the profession; and in more secular ways that included local politics, cultural promotion, reform efforts, and voluntary organizations.

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[12] Early images of frontier justice have not gone unchallenged. One of the most outstanding presentations of evidence contrary to a traditional image is John R. Wunder, Inferior Courts Superior Justice (Westport, Conn., 1979). See also Kermit L. Hall, "Hacks and Derelicts Revisited: American Territorial Judiciary, 1789-1959," Western Historical Quarterly 12, no. 3 (July 1981):273-89.

[13] Auerbach, Chapter 4.

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[14] For example, see David Ricardo Williams, Duff: A Life in the Law (Toronto, 1984).

[15] D. J. Hall, Clifford Sifton, vol. 1 (Vancouver, 1981). The author does not ignore Sifton's Brandon law practice but his focus is centered on politics from the outset.

In American history, lawyers, working and participating in community life and often in situations at least on the surface parallel to those in Canada, are depicted by writers as both visible and active participants in many facets of historical development. In the United States, lawyers and judges, whether liberal or conservative, instrumentalist[16] or formalist[17] in approach, are rarely passive. Innovative or reactionary, benign or destructive, they are seen and portrayed by historians as a vital force in shaping their society. Canadian lawyers, in contrast with their opposite number in the United States, are much less visible. Canadian lawyers also appear to be less active. Their unobtrusiveness is perhaps related to an unconsidered misrepresentation of Canadian legal men and the institutions which they have both informed and frequented.

Why do American lawyers seem to have a dynamic and visible quality or image, and Canadian lawyers a low profile? If the observation implied in the question is accurate and the distinction between Canadian and American historiography in this regard is real, then the answer lies rooted in the value systems and substantive history of the two nations. The contrasting images of Canadian and American lawyers are also tied to the central integrative themes of our respective literary traditions. American history writing in this century has centered around themes that stressed the democratic impact of a frontier environment, the conflict resulting from sectional or class-based economic divisions, the fundamental agreement or consensus among Americans over basic values and goals, the destructive nature of class domination, and the impress of pluralism on society.[18] Comprehensive Canadian themes, on the other hand, focused on the growth toward nationhood, sequential staples production, an expanding St. Lawrence commercial empire, and metropolitan-hinterland relationships.[19] These are by no means exhaustive lists of themes, but they do serve to illustrate in their dissimilarity that the role that a lawyer might play in Canadian interpretations could be vastly different than in the United States. In Canada, for example, Creightonesque business elites[20] and the politicians who supported and advocated the expansion of commercial empires and metropolitan networks, dominate the historical landscape in the nineteenth century. This may explain the neglect of lawyers in Canadian history writing as interpretive biases like these would account in part for the characteristic images of lawyers in the two historical traditions.

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[16] The most instructive discussion of the term's usage is Morton J. Horwitz, "The Emergence of an Instrumental Conception of American Law, 1780-1820," Perspectives in American History 5 (1971):287-326.

[17] For a discussion of the term, see Jennifer Nedelsky, "Judicial Conservatism in an Age of Innovation: Comparative Perspectives on Canadian Nuisance Law 1880-1930," Essays in the History of Canadian Law, vol. 1., ed. David Flaherty, pp. 281-83.

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[18] Gerald N. Grob and George Athan Billias, eds., Interpretations of American History Patterns and Perspectives, vols. 1 and 2, 4th ed. (New York, 1982).

[19] One of the most complete discussions is Carl Berger, The Writing of Canadian History (Toronto, 1976).

[20] Ibid., p. 216.

In the absence of stereotypical images of lawyers, the Canadian historian must work largely in a vacuum which is difficult methodologically. If images already exist in the literature, a point of departure presents itself immediately, as the accuracy of the previous interpretation can be tested and challenged. In Canadian history there is little to challenge. Every new effort in this field will be necessarily a path-breaking one. Historical paradigms, as we have seen, can either facilitate or block the entry of certain categories of actors from the historical stage. The unfortunate result of confining historical writing to limited perspectives is that the influence of entire social categories like lawyers, and their power to induce or sway historical developments, may be ignored.[21]

Intellectual history and legal history are in some respects similar. In each case, the nature of the discipline has tended to encourage an attenuated view of the historical actors. This may be partly due to the limiting influence of a largely idea-based subject matter common to both. Whatever the reason for their status, both intellectual and legal history occupy a position outside the mainstream of historical inquiry. Moving them closer to the mainstream means finding new ways to widen the scope of inquiry, making greater room for historical actors alongside the elaboration of ideas and ideals.

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[21] This is the line of argument taken by S. R. Mealing, "The Concept of Social Class and the Interpretation of Canadian History," Canadian Historical Review 64 (September 1965):201-18.

To some intellectual historians, the subject matter of meaningful inquiry is rightfully and naturally confined to the recorded beliefs of a narrow elite of highly original literate people or to institutions which sponsored particular forms of thinking.[22] In works of this kind, historians focus on the impact of one idea on another; upon the idea and only incidentally on the human personality or the circumstances that engendered the cerebral offering initially. A second type of intellectual inquiry brings forward certain ideas and beliefs, selected because of their popularity and the subsequent nature of their external characterization. In works of this type, attention is centered on the impact of the idea on society or its evolution in a complex culture.[23] Finally, there are those who accept a broader view of what constitutes legitimate intellectual history, arguing that the shared perceptions of a large cross-section of the public, even though their ideas are mostly nonconscious and inarticulate, shape behaviour. These historians contend that popular perceptions must also be the subject matter of intellectual history.[24] Apparently, as the nature of inquiry shifts and expands, so does the focus. The more all-encompassing the parameters of intellectual history become, the more it has in common with social history.[25]

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[22] Two distinguished examples of works of this type are A. B. McKillop, A Disciplined Intelligence: Critical Inquiry and Canadian Thought in the Victorian Era (Montreal, 1979) and S. E. D. Shortt, The Search for an Ideal: Six Canadian Intellectuals and their Convictions in an Age of Transition 1890-1930 (Toronto, 1976).

[23] See Carl Berger, The Sense of Power: Studies in the Ideas of Canadian Imperialism 1867-1914 (Toronto, 1979) and Doug Owram, Promise of Eden: The Canadian Expansionist Movement and the Idea of the West 1856-1900 (Toronto, 1980).

In legal history, a similar "tension" over the correct placement of focus exists. In legal history, not unlike intellectual history, the first legal historians, usually lawyers or judges, were primarily interested in discovering the origins and development of particular legal doctrines, in outlining the development of legal institutions, or in recounting the contributions of outstanding or famous legal minds. Attempting to write history this way, Daniel Boorstin once quipped, was akin to trying to plant cut flowers.[26] Much of legal history writing continued in this vein until Willard Hurst, an American historian, became active in this field. Hurst inaugurated a pathbreaking historiographic shift with far-reaching consequences; his work representing a bridge between the old legal history and the new. By constantly focusing on the bilateral relationship between law and society, Hurst emphasized that the law has important social implications.[27] In the compelling wake created by Hurst, the purview of legal historians was extended, concentrating on several vantage points; the law itself, the reciprocal relationship between law and society and on the effects on society of legal change of all kinds. Legal history has then, as with intellectual history, embraced a far greater scope than ever before.

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[24] See, for example, Keith Walden, Visions of Order: The Canadian Mounties in Symbol and Myth (Toronto, 1982).

[25] See Paul Conkin, "Intellectual History," in The Reinterpretation of American History and Culture, ed. William Cartwright and Richard Watson (Washington, D.C., 1973), pp. 227-46 for his incisive historiographical analysis of the contours and parameters of intellectual history.

[26] "The Humane Study of Law," Yale Law Journal 57 (1948):964.

Regardless of the shortcomings in writing legal history in the past, there is a growing recognition that in order for legal history to be meaningful it must be more than a mere description of the internal structure of legal change, or a recital of a chain of legal achievements. For too long, claims Willard Hurst, legal history "began and ended with the output of judges."[28] Ancther observer pointed out that real legal history has always consisted of only "social history, political history, and labor history in a fashionable, mystical, and somewhat impenetrable and awesome disguise."[29] Legal history then, when the awesome disguise is removed, is far more than an internal and descriptive focus on legal things, but is an appreciation of the "interaction between the boxful of legal things and the wider society of which they are a part."[30] That boxful of legal things, of course, includes lawyers. To appreciate their thought and achievements in historical context is one of the greatest challenges in writing meaningful legal history, for they provide the fundamental link between the law and society. In this sense, then, it is necessary to recognize that legal practitioners were not "legal beings" only, but also "social beings." In the case of Manitoba, where the first permanent community of lawyers on the Canadian prairies began to develop, it was not less true.

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[27] "The Law in United States History," Proceedings of the American Philosophical Society 104 (October 1960):518-26 presents Hurst's call for an expanded philosophy of legal history.

[28] "Old and New Dimensions of Research in United States Legal History," American Journal of Legal History 23 (1973):20.

From the arrival of the first lawyer in the Red River Settlement in 1839 until the transfer of Rupert's Land to Canada in 1870, men trained in the law behaved and were perceived as 'outsiders.' In the conditions which prevailed in the Settlement before 1870, their presence was largely premature. During the 1870's, however, newly arrived legal practitioners, though regarded at the outset as 'intruders' by some of the community's leaders, responded to the challenges they faced by taking deliberate steps to confirm their professional presence in the province. They did so by delineating the parameters of professional membership and by claiming legal functions and spaces as their own. Coincidentally, prominent[31] lawyers who arrived before 1878 employed various avenues of integration in non-professional and non-legal spheres as well. Their influence, for example, was exerted in political life to a degree that was arguably disproportionate to their total numbers, while many were at the same time exploring and exploiting business opportunities which would ensure their economic viability in a yet undeveloped local economy. Successful integration for these 'firstcomers' and their subsequent assumption of a more prominent place in Manitoba life in large part flowed from their simply being on hand to assist in creating and developing the institutional structures necessary to sustain a vibrant legal life in which they might continue to participate. Between 1878 and 1888, the first decade of their continuous and independent professional standing, the size of the profession increased dramatically. During that time, as competition among lawyers increased, the dominant strategy for professional advancement saw prominent lawyers or those aspiring to become so, employing their natural role as 'brokers' in professional circles in order to enhance or sustain their reputations and careers. In the more public networks of contact and association which defined their world most personal interactions, whether in business, politics, or merely social, involved a purposeful intermingling of aims which served to enhance prominence as well. Many of these 'newcomers' established the tone for professional life in the following decade. On their way to becoming 'insiders' during the 1890's, they were in a position to impart to the newest members of the profession, who had mostly grown up and been educated in Manitoba, the appropriate values, attitudes and style of leading lawyers in the province. By the closing decade of the century, Manitoba's prominent lawyers were very much in step with the prevailing imperative of the time. They, like other Manitobans, were consolidating their position in the province and occasionally allowed themselves to dream of an elevated place in the Dominion one day. Emphasizing their autonomy as professionals and concerned about their image, they endeavored to collectively consolidate the gains which had already been made by lawyers. At the same time, Canadian society was becoming far more complex and modernizing trends demanded that lawyers begin to reassess their role in it and respond to various calls for legal change.

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[29] Wythe Holt, "Now and Then: The Uncertain State of Nineteenth-Century American Legal History," Indiana Law Review 7 (1974):615.

[30] Robert W. Gordon, quoted in Flaherty, "Writing Canadian Legal History," Essays History Canadian Law, p. 12.

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[31] While the structure of prominence among lawyers was undergoing change, the criterion I employed in choosing successive representative cohorts of lawyers who began their legal careers in Manitoba at different times and under separate sets of circumstances, remained consistent. Lawyers regarded as prominent for the purposes of this study satisfied a combination of standards which included demonstrable persistence or longevity in Manitoba legal life; evidence of high regard or strong reputation among legal peers, notable public accomplishments or recognized superior legal talents, the notice of contemporary biographical descriptions and memorial notices, and a less tangible quality of visibility.

Their responses varied, but there was no escaping the reality of the challenges that a new age of modernity promised to bring after 1900.

Among lawyers in Manitoba, becoming prominent involved an historical experience delineated by identifiable stages of development with salient features peculiar to each stage. But as the broad outlines of lawyer strategies and responses changed, the structure of prominence was also undergoing change. Measured by such indicators as motives for migrating, geographical origins, paternal ethnic origins, religious affiliations, intergenerational social mobility, educational preparation and pre-law experiences, marital status and kinds of organizations joined, patterns emerge which distinguish the changing structural character of the 'firstcomers' (1870-1878), 'newcomers' (1879-1888) and the 'latecomers' (1889-1900). At the same time that the structure of prominence was changing a number of factors remained the same, confirming patterns of prominence and indicating that by 1900 many aspects of legal life had become routine. Indeed, by the first decade of the new century, prominent Manitoba lawyers were, in fact, 'insiders' in an occupational field which was an essential part of the fabric of Manitoba life.

CHAPTER II

OUTSIDERS: A PREMATURE PROFESSIONAL PRESENCE, LAWYERS IN RED RIVER, 1840-70

The first lawyers of the Western Interior who used their knowledge and training in a manner which underscored their claims to a peculiar professional status, figured prominently in events and circumstances punctuating the transition from the world of the fur trade to that of industrial capitalism. During that transition, "common property resources" were being transformed by degrees into "private property." European residents were redefining status by imposing altered standards of race and class, and the very idea of the West was changed to suit the expansionist aims of an increasingly acquisitive English Canada.[1] The individual experiences of lawyers during these changes, though widely separated in details, demonstrate that in Rupert's Land their presence, in terms of community receptivity and the legal landscape satisfying their aspirations, was in many respects premature. The first western lawyers were unable to enjoy the benefits of association with other lawyers with similar aspirations and attitudes which would have reinforced professional community expectations and perhaps curbed excesses. They provided legal knowledge and skills in a society where lawyers were the exception since the legal system was pre-adversarial.[2] The socio-economic circumstances in the Red River Settlement had not yet developed to the point where such professionals could be fully, independently and gainfully employed or give full expression to their forensic talents. Thus lawyers remained isolated and outside the complex cultural synthesis of the community. The lawyer's role as agent and advocate in court, for example, fell to others:

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[1] The nature of the transition is elaborated at greater length in Gerald Friesen, The Canadian Prairies: A History (Toronto, 1984), Chapter 6 and in Irene Spry, "The Great Transformation: The Disappearance of The Commons in Western Canada," Man and Nature on the Prairies, ed. Richard Allen (Regina, 1976).

> It frequently occurs . . . that a suitor is unable to conduct his own case, either from want of general ability or ignorance of some of the languages, English, French, or Cree, spoken by the witnesses. It also happens that the principal party is absent, or that there is a multitude of parties interested in a case. Under all these possibilities the practice has been allowed of suitors appearing by their agents. These are of course entirely unprofessional men, there being as yet no lawyers resident in the colony . . . . The Principles of law laid down, and the precedents claimed in their favour, by these legal amateurs, are certainly sometimes of a nature to make the wig of a professional lawyer stand on end; but . . . the court always managed to steer its way intact through the stormiest tempests of opposing eloquence which blow at its bar.[3]

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[2] As it is applied here, the term adversarial refers to a system of justice in which lawyers regularly confront one another in courts while representing the interests of opposing clients. A pre-adversarial system in Red River relied on other community leaders to act as agents in court or to initiate and guide mediation or conciliation efforts.

[3] James Hargrave, Red River (Montreal, 1871), p. 214. When the author indicates that there are no lawyers, he of course means that there were none to employ who were not

Under these conditions, men like Adam Thom, Alexander Isbister, Francis Godschall Johnson, Frank Larned Hunt, James Ross and Enos Stutsman, though trained as lawyers at some point in their lives, were all "outsiders" whose individual and collective quest for an influential and prominent place in Red River was circumscribed and informed by conditions which existed there prior to 1870. Nonetheless, they introduced and set in motion the broad process of professionalization which spelled the end of amateurism in law practice and began the integration of lawyers into the social, economic and political fabric of the community. Though their impact varied, the presence of lawyers between 1840 and 1870 signalled that the legal life of the community could not remain static nor would the transformation of the West, both in attitudinal and in substantial terms, occur without them.[4]

When Adam Thom,[5] relatively youthful and as yet inexperienced in the practice of law, arrived in Red River in 1839 to assume his duties as Recorder of Rupert's Land

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otherwise preoccupied, as in the case of judges who also had legal credentials.

[4] The image of the West was redefined by an expansionist movement originating in populated English Canada. See Douglas Owram, Promise of Eden: The Canadian Expansionist Movement and the Idea of the West 1856-1900 (Toronto, 1980).

[5] The most complete biographical treatment is Kathryn M. Bindon, "Journalist and Judge: Adam Thom's British North American Career 1833-1854" (M.A. thesis, Queen's University, 1972) and Dictionary of Canadian Biography XI, s.v. "Thom, Adam," by Kathryn M. Bindon.

and Councillor of Assiniboia and Rupert's Land, he became the first person trained in the law to reside in the Settlement. The decision by Governor George Simpson to unofficially offer Thom the freshly created judicial post the previous year[6] reflected the Hudson's Bay Company's (HBC) commitment to formalizing the administration of justice so that it might more naturally conform with the changing contours of the growing community and its commitment to maintaining and protecting its monopoly in the fur trade.[7] Although the Company had, under its Royal Charter of 1670, always accepted full responsibility for all aspects of the administration of justice, these duties were never onerous. The provision of a reorganized system in 1835 recognized that the legal needs of Red River had become more complex and also rather conveniently coincided with the reconveyance by the heirs of Lord Selkirk of land granted for settlement. The action created an opportunity for the judicial administration to be revamped and to be put "on a more firm and regular footing," as Simpson explained, in order to "guard against dangers from abroad or difficulties at home, for the maintenance of good order and tranquillity, and for the security and protection of lives and property."[8] As a consequence, the easy informality which had marked the earlier system was soon replaced between 1835 and 1839 as courts were created or reorganized and jurisdictions adjusted.[9] All of these changes were nearly completed on 30 June 1839 when Thom, a man of striking physical appearance and rigid personality, accepted the appointment as Recorder in Rupert's Land at a reported yearly salary of £55 sterling plus a £22 per annum living allowance. Thom immediately commenced functioning as legal organizer and as advisor, judge and councillor.

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[6] H.B.C.A., D.4/23, George Simpson to Adam Thom, 4 January 1838.

[7] Kathryn M. Bindon, "Hudson's Bay Company Law: Adam Thom and the Institution of Order in Rupert's Land 1839-54," Essays in the History of Canadian Law, 2 vols., ed. David Flaherty (Toronto, 1981), 1:43 points out that the community was also in favor of regularizing the system of justice, but for another reason. They perceived it as "a means of curbing the Company's authority."

Thom's anticipated role called for skillful diplomacy to convince a sometimes skeptical community of the benign fairness and the utility of the position, while at the same time expecting this individual to support the legalities of the Company's trading monopoly prerogatives with calm firmness. Since the administrative framework and judicial structures even after the reorganization were not complex, Thom was called upon to perform a variety of tasks and functions in order to make the system viable. In this position, which was roughly analogous to the functions performed by Recorders in Britain and in certain colonial contexts,[10] Thom's duties were to include interpretation and advice on ordinances as a member of the Council of Assiniboia, the supervision and direction of the courts, especially the General Quarterly Court,[11] where he was to sit as judge in civil disputes exceeding £10 in value and in all criminal cases, and to take the initiative in generally modifying the law and legal institutions as required.

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[8] See 'Minutes,' 12 February 1835, quoted in E. H. Oliver, ed., The Canadian North West: Its Early Development and Legislative Records 1 (Ottawa, 1914):267. Of great concern to Company men was the possibility of violence "among the Half-breeds." Donald Ross urged that "unless some speedy measures are adopted . . . both the Settlement and the Fur Trade will fall to pieces on our hands . . . and perhaps get our throats cut in the bargain" (Donald Ross to James Hargrave, 13 March 1835, in G. P. de t. Glazebrook, ed., The Hargrave Correspondence, 1821-43 [Toronto, 1938], pp. 188-89).

[9] Simpson inaugurated the new system, particularly the General Quarterly Court, because as Alexander Ross explains, "all points hitherto in dispute were settled by the Governor himself," quoted in E. E. Rich, The History of the Hudson's Bay Company, 1670-1870, 3 vols. (Toronto, 1960), 3:531. Archer Martin, "The Rise of Law in Rupert's Land," Western Law Times 1 (1890):49-59, 73-80 and 93-100 includes a reliable discussion of the reorganization.

Many of the difficulties which the hard-working and loyal, though argumentative Thom encountered during his stormy career were the result of the inherent contradiction in his job description, noted by his biographer as the "inappropriate linking" of his roles as servant of justice and employee of the HBC.[12] Another man might have successfully overcome the problem of choosing between the law or an employer as master, but Thom's deeply prejudiced and rigid personality was his greatest liability. Rather than winning the broad support of the community for the system of justice he was called upon to oversee, his failure to allay the suspicions which constantly surrounded his actions, a series of well-publicized and largely unnecessary clashes in which he became embroiled, and finally, the justifiably negative reactions of the dominant Métis towards Thom, combined to undermine respect for the legal things, including lawyers, which he came to represent in the Colony.

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[10] Bindon, "Hudson's Bay Company Law," pp. 49-50 mentions mayoralty courts in England and courts in colonial New York as having the office of Recorder.

[11] The General Quarterly Court took its name from the fact that it met at quarterly intervals during the year, usually in January, May, August and November.

[12] Bindon, "Hudson's Bay Company Law," p. 44.

Writing to Thom in 1839 to confirm his recommendation to the Governor and Committee of the HBC, Simpson asserted "I feel assured you will in every respect do honour to my recommendation."[13] That Simpson would persist in recommending Thom for the substantially francophone and Catholic community of Red River in the face of warnings to the contrary seems puzzling when Thom's very public and persistent francophobia during his first Canadian career in Lower Canada is taken into account. After graduating from King's College, University of Aberdeen in Scotland in 1819 and briefly pursuing a career as a teacher and author of a grammar text, Adam Thom had emigrated to Montreal in 1832. There he combined articling in the law office of James Charles Grant, a leading member of the merchant class, with editing the Settler or British, Irish and Canadian Gazette. During his tenure as publisher and editor of the Settler, which ceased publication on 31 December 1833, Thom promoted

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[13] H.B.C.A., D.4/23, George Simpson to Adam Thom, 4 July 1838.

English immigration to Lower Canada with the openly declared objective of curbing the dangerously anti-progressive tendencies of French Canadians. This journalistic assault intensified when he assumed the editorship of the Montreal Herald in 1835. Thom adamantly opposed and vigorously criticized every indication that the Imperial government intended to pursue a policy of conciliation toward French Canadians. Writing under various thinly veiled pseudonyms, Thom authored pamphlets and letters which ridiculed the groundless nature of French Canadian complaints contained in the 92 Resolutions and encouraged the idea that the political and economic problems of Lower Canada were simply exacerbated by giving in to French demands. The Anti-Bureaucrat and Anti-Catholic letters, to which Thom later admitted authorship, revealed his strongly ethnocentric and prejudicial belief in the "heritability" of cultural characteristics which preordained certain national types to inferior status.[14] His own anti-French attitudes, which fittingly earned him the epithet "un ennemi plus ouvert et plus acharné,"[15] reflected those of the city's English business elite and were confirmed even more rigidly by the outbreak of violence in 1837. During the most active period of hostilities he even assisted in the raising of an armed Doric Club. Suspicious, but not repelled by Lord Durham's liberal reputation, Thom offered his assistance to the

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[14] Bindon, "Hudson's Bay Company Law," p.76.

[15] Minerve, 27 April 1838.

Governor General and his staff and on 25 August 1838 he was named as assistant commissioner of the municipal commission. Ignoring vehement objections to his appointment of Thom, Lord Durham accepted some of Thom's anti-French concerns, suggestions on internal improvements and the form of government best suited for Lower Canada, incorporating them in his final Report which Thom journeyed to England to assist in preparing.

Having been admitted to the bar of Lower Canada only in 1837, Thom's legal work, while limited, had put him in direct contact with George Simpson. Thom's association with several influential figures in the Montreal merchant community, including George Moffat, Peter McGill and James Charles Grant, further ensured that he captured Simpson's attention. Anonymous objections raised about Thom's potential for recalcitrance indicated some concern over his ability to administer policies he might personally disagree with. In spite of the fact that Thom's strident and well-known francophobic views must have been the spark to ignite some of these concerns, his loyalty and integrity was assured by the Governor in recommending him to the Company's London Committee.[16] Recognizing that fluency in French was a requirement of his employment in Red River and presuming that occupational necessity in Montreal had made Thom comfortable in the language, Simpson had written to Thom to indicate that "without which [French] you would not be adapted for the situation."[17] Reinforcing Simpson's own endorsement, Governor General Lord Durham's appointment of Thom to his staff in 1838 satisfied everyone, as Bindon points out,

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[16] H.B.C.A., D.4/23, 24 April 1838.

> they were dealing with a responsible officer of the Governor General of British North America, not an unknown Lower Canadian lawyer whose intense feelings about French Canadians might hamper the effective administration of justice in the Red River settlement.[18]

In this instance, the error in judgment would have far-reaching consequences in Rupert's Land, for if his reputation did not precede him, he carried it with him to Red River.

With characteristic alacrity, Thom assumed that the Company wished him to promote a well-ordered progress in Red River by enunciating the legal modifications necessary in order to "reconcile the peculiar circumstances of Rupert's Land with the fundamental principles of the Laws of England."[19] Therefore, soon after his arrival, he proposed to the Governor and Committee to prepare a code of laws specifically designed to meet the needs of the Red River Settlement. In October 1840, Thom presented his 'Penal and Temporary Civil Code' and it was adopted by the Governor and Committee in London without alteration.[20] His compilation of laws and regulations in these codes represent an ambitious and successful attempt to modify the legal system as the needs of the community required, while at the same time blending traditional British procedural forms, in law and equity.[21] One measure of the success of the venture was that the code survived largely intact through refinements made to it in 1845 and 1851, when Thom was still involved in the revisions, and eventually was the basis of a more comprehensive code developed in his absence in 1862. Another is that both the Company and the community were generally happy with the codes, if not with the application of them. Unfortunately, Adam Thom was unable to translate this sort of substantive legal improvement into community-wide support of his leadership in the law.

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[17] Ibid., 4 January 1838.

[18] Bindon, "Hudson's Bay Company Law," p. 55.

[19] H.B.C.A., D.5/5, 29 May 1840.

[20] Ibid., 15 December 1840.

From the outset, the Recorder's application of legal principles and his position as an employee of the Company encouraged criticisms and raised suspicions regarding his objectivity. One of Thom's severest critics, Sheriff Alexander Ross, revealing some of his own impatient bias, lamented the passing of flexible forms of justice which before 1839 were characterized by "simple honesty," and replacing them with "a tendency to substitute the quibbles and technicalities of law, which few men but lawyers themselves comprehend."[22] Forced by circumstances to work with Thom on several occasions in a generally antagonistic relationship, Ross displayed a layman's resentment, while lawyer Thom was patently disdainful of criticism of his actions.[23] Nevertheless, Ross does reveal a sense of the broader community perception. Speaking of the Recorder's domination over the application of laws in Assiniboia, Ross wrote:

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[21] Ibid., 30 October 1840. Soon after his arrival, Thom investigated the Company Charter and concluded that the law system in force in Rupert's Land was that of 1670. By 1851 he had modified his views, finding that the laws of England in 1670 were impossible to apply. Therefore, the revised code of 1851 declared that the laws of England in place when Queen Victoria ascended the throne were the operative laws of Rupert's Land. A useful discussion of the reception of the law in the West is Desmond H. Brown, "Unpredictable and Uncertain: Criminal Law in the Canadian North West Before 1886," Alberta Law Review 17 (1979):497-512.

> It was the Recorder that penned them; it was the Recorder that argued them through the council in a masterly manner; it was the Recorder that interpreted them, so as to make their inevitable generalities fit particular cases. In these respects he may be said to have always had his own way--less would not satisfy him--and this often raised up difficulties between himself and his colleagues. People said he possessed the gift of twisting and untwisting his interpretations, so as always to fit his own cause.[24]

Since there were no persons in the Settlement qualified to challenge him, Thom's actions elicited fears that he would act arbitrarily or seek to exceed the limits of his authority or insidiously extend the parameters of the Company's jurisdiction. Thom's actions did not dispel these concerns; they enhanced them.

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[22] The Red River Settlement (London, 1856; reprint ed., Edmonton, 1972), p. 223.

[23] H.B.C.A., D.5/5, Adam Thom to George Simpson, 31 July 1840.

[24] The Red River Settlement, p. 383. While not as severe in their critique, Donald Gunn and C. R. Tuttle complained that Thom's role as Company judge was problematic because "it was felt that justice was more likely to be obtained from someone who was not a paid servant of the Company" (History of Manitoba [Ottawa, 1880], p. 298).

Impervious to criticisms and too often blind to the delicacy of his position between Company and community expectations, Thom was convinced of the rightness of his views. The work of examining and establishing the legal frameworks confirmed in his mind that the Company enjoyed an unimpaired jurisdiction in all aspects of community life. In other words, the Company charter rights were the law of the land.[25] Extending this logic he appears to have defined the Company's role and his role as their legal officer to extend to an active campaign to civilize and anglicize the primitive society. He would find, however, that he was not the only professional arbiter of English values in the settlement especially when he touched upon ecclesiastical matters.

In 1842 Adam Thom began a bitter controversy with Reverend John Smithurst, an Anglican clergyman and Church Missionary Society (CMS) missionary. Anticipating the occasion of Bishop Mountain's proposed visit to the settlement, it was assumed by Smithurst and the other Anglican clergy in the Red River mission that several unordained church workers in the mission would be ordained. Smithurst had been continually apprehensive about the need to protect and consolidate the Mission in the face of actions by the Company which appeared designed to prevent this. Thom was probably uninterested in the legal questions surrounding colonial ordinations, but prompted by a visit from Smithurst in late 1841 who inquired about the Colonial Ordination Act, he took up his pen. By March of 1842 Thom was circulating an essay entitled "Observations on the Colonial Ordination Act."[26] Armed with his legal expertise, Thom argued that the anticipated ordination would not be possible under the law since the Archbishop of Canterbury would not be able to authorize the Bishop of Montreal to ordain clergy in Red River. Smithurst was outraged, and seeking to protect the professional prerogative and boundaries of his ecclesiastical bailiwick, he argued the opposing view, which eventually won the day on the advice of the Company's lawyers in London.[27] Before that was settled, however, bitter notes and acrimonious debate clouded the issue in the clash between two remarkably similar jousting professionals. The dispute captured little interest from the community but it did provoke scoldings for both men from the CMS and the HBC for behaving in such a discourteous manner. They both took themselves far too seriously and seemed ill-adapted to the social world of Red River. Thom and Smithurst presumed to exercise leadership in a society unprepared to accept or defer to them.[28]

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[25] This view was enunciated in "A Charge Delivered to the Grand Jury of Assiniboia, February 20, 1845" and reported in Bindon, "Hudson's Bay Company Law," p. 56.

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[26] C.M.S.A., Incoming Correspondence, Colonial Ordination Controversy of 1842, Observations on the Colonial Act, 9 March through April 1842.

[27] H.B.C.A., D.6/26, fos. 88-89, London Committee Secretary to John Smithurst, 29 March 1843.

Thom's refusal to speak French and his excessive and deliberate pedantry offended and alienated the majority Métis population in the settlement. Growing anxiety over his racial attitude and the niggling fear that he would exceed the limits of his legal authority fueled the fear that the Recorder "could turn black into white, and white into black."[29] As his relationship with the community continued to deteriorate during the 1840's, the sentencing in 1845 of a Saulteaux Indian to death, after a trial filled with irregularities, and in spite of the stipulation that all capital cases were to be tried in Upper Canada, illustrated how unresponsive he had become to any view but his own.[30]

Confident of his authority under the charter and appreciating that the administrative and judicial reorganization of 1835-39 was partly motivated by a desire to curb petty traders, Thom began focusing his efforts on attacking the increasingly common illicit free trade which was carried on with American posts by the mid-1840's.[31] He remained in the background, but together with Governor Alexander Christie, began devising steps which would have the desired effect. Measures formulated initially were indirect in that suspects were not arrested nor their goods seized. All importers were required to declare under oath that they were in no way involved in illegal trade, non-compliance resulting in the loss of Company ship transportation privileges.[32] Thom admitted that "I may occasionally appear to have stept [sic] beyond the limits of my own province."[33] Nevertheless, restrictions on the mails, which implied mail inspection authority for the Company, and a new land deed designed in 1845 by Recorder Thom were added to the assault. Letters not identifying their author and sealed by Company authority were forbidden, while promises to respect the Company monopoly were made imperative for settlement residents to confirm their land tenure. The arbitrariness of these measures and an unsuccessful attempt to introduce an increase in duty on American imports in June of 1845 antagonized the settlement and fixed their resentment on Thom, whom few doubted was the true instigator.[34]

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[28] Richard Willie, "From Mission to Diocese: The Anglican Red River Mission, Red River Settlement, 1838-1849" (M.A. thesis, University of Alberta, 1979), pp. 98-100. Like Thom, who was eventually forced from Red River in disrepute, Smithurst left under the cloud of an alleged sex scandal. Their conflict over this issue was perhaps a part of the cleavage between Church of England clergymen, who were gentlemen and believed themselves superior to the new professions, and lawyers, who were products of the commercial transformation of England in the nineteenth century. Anthony Trollope's character, Rev. Crawley, in The Last Chronicle of Barset (1867), explains that "he was a clergyman in the Church of England and . . . he had rank in his own country, . . . a certain right of precedence; whereas the attorney . . . was, so to say, nobody in the eyes of the world" (quoted in Daniel Duman, "The Creation and Diffusion of a Professional Ideology in the Nineteenth Century England," The Sociological Review n.s., 27 [1979]:119).

[29] Ross, The Red River Settlement, pp. 384-85.

[30] Bindon, "Hudson's Bay Company Law," pp. 61-62.

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[31] His concern is apparent in H.B.C.A., D.5/13, Adam Thom to George Simpson, 2 January 1845.

[32] W. L. Morton, introduction to E. E. Rich, ed., Eden Colvile's Letters 1849-52 (London, 1956), pp. lx-lxi.

[33] H.B.C.A., D.5/13, Adam Thom to George Simpson, 10 March 1845.

As the battle against free trade continued, the personality of Recorder Thom became confused with the issues involved to the extent that he came to symbolize the hated commercial monopoly and was also the central focus of complaints among the French Métis because of his cultural arrogance and antagonism.[35] When Governor Caldwell and Chief Factor Ballenden decided to escalate the repression of free trade by recourse to the courts with the arrest of four Métis for illegal possession of furs in 1849, opposition quickly solidified against Thom, perhaps as much as against the Company's monopoly. The trial of Pierre-Guillaume Sayer on the charge of illegal possession of furs was held on Ascension Day (17 May) 1849. The deliberate choice of the holy day did not calm resistance but only served to arouse more anger against the judicial authority of the Company. Exhorted and led by Louis Riel Sr., the courthouse was surrounded by armed Métis who threatened violence against Thom should the verdict turn against Sayer.[36] Representing the free trade opposition and acting as an agent for Sayer, James Sinclair entered the court. Relying on common sense and community support for his advocacy, Sinclair symbolized the traditional form of advocacy in Red River. Facing him was Recorder Thom,[37] portending the coming monetization of legal knowledge and loyalties and adherences to strict legal forms. Sinclair demanded free trade and the removal of restrictions which had been imposed and called for the Recorder to be recalled, but to no avail. Chief Factor Ballenden, acting as both prosecutor and witness, had little difficulty establishing guilt, while Thom explained that justice demanded that the Company's charter rights be upheld. Once a verdict of guilty was reached, Ballenden recommended clemency and agreed to the dismissal of the three remaining cases, satisfied that a principle of law had been established. The hard won principle of law was technically correct but was lost on the assembled crowd, who took the unconditional release to mean that "Le Commerce est libre."[38] "Vindicated" legally, both Thom and the Company were, as Bindon stresses, "practically defeated"[39] by the

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[34] The resentment had been simmering for some time. See John Rowand to James Hargrave, 20 June 1843, quoted in Glazebrook, ed., The Hargrave Correspondence, p. 442. "When Mr. Tom [sic] goes he will not be regretted all the people at R. R. hate the Gentleman it would not require much for the half breeds to send him off (it would be so much wages saved)."

[35] Bindon, "Hudson's Bay Company Law," passim.

[36] The threat of violence was very real. "A wild

Metis demanded to be let into the Court House to shoot Judge Thom on the bench" (quoted in Margaret Macleod and W. L. Morton, Cuthbert Grant of Grantown [Toronto, 1963], p. 136).

[37] Also on the bench were Major Caldwell, Governor of Assiniboia, and John Bunn and Alexander Ross, both Councillors of Assiniboia and Justices of the Peace.

[38] These words were shouted to the crowd outside the courthouse by one of the Francophone jurors, Ducharme.

[39] "Thom, Adam," p. 875.

outcome of the Sayer trial. Although the Company was effectively forced to relinquish claims to monopoly in the region, Thom was thoroughly discredited.

Two weeks later, Governor Simpson was petitioned by the Métis. Reflecting concerns over threats to their cultural identity as well as reiterating the free trade principle, their major grievances and demands concentrated on calls for Thom's dismissal, the use of French in judicial practice and Métis political representation.[40] Both Thom and the Governor were reluctant to back down[41] but at a special meeting of the Council of Assiniboia, 31 May 1849, Thom acceded to the demand that he speak French.[42] He was also persuaded by Simpson not to act as Recorder.[43]

Resentful of his less than voluntary isolation, adamant in his refusal to be intimidated by the Métis, and needful of an opportunity to demonstrate the folly of not recognizing his legal abilities, Thom deliberately became a litigant in a court case in February 1850. In Matheson v Thom,[44] Thom refused to pay Matheson for building a veranda on his house,[45] neither a shortage of funds nor poor workmanship being the motivation. In an effort to "teach him a lesson," arguing that no written bill had been presented, Thom forced Matheson to sue for redress.[46] In court his manner was obstreperous and contemptuous. With all of his blatant prejudices in full view, he refused to be tried by French-speaking jurors, he sought to embarrass Cuthbert Grant, who was presiding, by citing procedural irregularities, and eventually he stomped out of the courtroom in apparent disgust. In the end, Thom voluntarily paid Matheson more than the amount claimed in the suit. Instead of demonstrating his positive value to the community, he irreparably damaged his reputation through these actions.

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[40] Oliver, The Canadian North West, 1:352.

[41] H.B.C.A., D.5/27, Adam Thom to George Simpson, 19 March 1850; Ibid, A.12/4, George Simpson to Governor and Committee, 30 June 1849.

[42] Oliver, The Canadian North West, 1:352.

[43] Roy St. George Stubbs, Four Recorders of Rupert's Land (Winnipeg, 1967), p. 32.

[44] P.A.M., MG2 B4-1. District of Assiniboia, General Quarterly Court Records, 1850. The most complete account of the case is in Roy St. George Stubbs, "Law and Authority in Red River," The Beaver (Summer 1968):17-21.

Thom's estrangement from Red River broadened later the same year when he unwisely chose to advise the aggrieved party in a libel.[47] The Foss v. Pelly suit which followed was the result of gossip and accusations that Sarah Ballenden, the mixed-blood wife of Chief Factor Ballenden, had been unfaithful. Captain Christopher Foss, the man identified as her lover, angered by a demotion caused by the scandal, accepted Thom's advice and sued the husbands of the gossips. Having acted as counsel for the plaintiffs in the case should have been enough to disqualify him from hearing the case, but Thom was convinced that his legal expertise was required in order to meet "his standards of professionalism."[48] Though warned By Governor Simpson, through Governor Caldwell,[49] not to act in this case because it might arouse further public antipathy, Thom ignored the warning. Although siding with the plaintiff in the case and even testifying on behalf of Foss, Thom appeared to be supporting an English Métis woman whose reputation was being unfairly challenged; his lack of objectivity in the trial reignited concerns about his suitability as a judge.[50] Eden Colvile, reflecting on the trial, wrote to Simpson that Thom, "for a clever man," was "endowed with marvellously little judgment."[51] How little judgment was readily apparent soon afterwards when Foss and Ballenden took up residence together, providing George Simpson occasion to take up his pen to chastise Thom for not following his advice and to remind him that "you were duped."[52]

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[45] This home was his third in Red River and was purchased by Thom in 1847. Built by Chief Factor Charles, Thom lived there with his wife Anne and his son Adam, born in 1843. The building later became the residence of the Bishop of Rupert's Land.

[46] Bindon, "Hudson's Bay Company Law," p. 71.

[47] Sylvia Van Kirk, "Many Tender Ties" Women in Fur-Trade Society in Western Canada, 1670-1870 (Winnipeg, 1980), chapter 9 establishes the cultural context of the incident and explains the nature of the divisive responses it elicited in Red River.

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[48] The phrase belongs to Kathryn Bindon.

[49] H.B.C.A., D.4/42, George Simpson to Adam Thom, 3 July 1850.

[50] See Letitia Hargrave to Mrs. D. Mactavish, 29 August 1850, in M. A. Macleod, ed., The Letters of Letitia Hargrave (Toronto, 1947), pp. 255-56 and the testimony of Lt. Colonel William Caldwell in Great Britain, Sessional Papers (1857), "Report from the Select Committee of the Hudson's Bay Company," questions 5443-45 and 5458.

[51] H.B.C.A., D.5/28, Eden Colvile to George Simpson, 19 September 1850.

Demands for Thom's dismissal, warnings from Métis spokesmen that his presence in court would not be tolerated and his constant complaints to the London Committee about his salary eroded his support throughout the Company. On 10 April 1851 his appointment as Recorder of Rupert's Land was revoked, eliciting an angry response from Thom to the reasons cited for his dismissal. His reward for loyalty to the commercial rights of his employer combined with "lost prospects at the bar" of Lower Canada entitled him to much better treatment, he thought.[53] Simpson disagreed and penned a stinging recital of Thom's shortcomings.[54] In order to continue to retain a professional legal advisor, the Company appointed him at his former salary as Clerk of the Court of Assiniboia but his real duties were few and his authority minimal. Complaints that paying his salary was wasteful[55] and acknowledgement of his entire failure in the Settlement in the face of continuing threats against his person led to negotiations to urge his resignation which was submitted in 1854. His career in Red River ended, Thom returned to England.[56]

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[52] Ibid., D.4/43, George Simpson to Adam Thom, 20 April 1851.

[53] Ibid., D.5/27, Adam Thom to George Simpson, 23 July 1851.

[54] Ibid., D.4/44, George Simpson to Adam Thom, 10 December 1851.

[55] Eden Colvile to George Simpson, 14 July 1851 and 21 July 1852 in E. E. Rich, ed., Eden Colvile's Letters, pp. 231 and 160.

Alexander Kennedy Isbister[57] was one of two prominent mixed-blood sons of Rupert's Land (the other was James Ross) to become lawyers. Ambitious and intellectually able, his origins did not prevent him from "eating" his way to a position as barrister-at-law of the Middle Temple in London, England by 1866, having taken the required number of meals in the Barristers Hall. Though his primary career as an educator and administrator in England made him an eminent spokesman for educational reform, it was through his advocacy of the contestable rights of the citizens of Red River and his critiques of the HBC, when acting in the capacity of legal advisor and spokesman, that he captured and maintained the notice of Red River. Because of the undeveloped nature of Red River, the only settled community of any size in Rupert's Land, practicing law there was not possible, except on retainer, as in Adam Thom's case. Nonetheless, there were legal tasks to perform and the careers of Thom and Isbister intersected, albeit at a distance, in the 1840's in clashes over the question of free trade and over the Company's control of the judicial machinery of Assiniboia.

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[56] While in Red River, Thom published two analytical works: The Claims to the Oregon Territory Considered (1844) and Chronology of Prophecy (1848).

[57] For a biography of Isbister, see Dictionary of Canadian Biography XI, s.v. "Isbister, Alexander Kennedy," by Sylvia Van Kirk; H. C. Knox, "Alexander Kennedy Isbister," H.S.S.M. Transactions, ser. 3, no. 12 (1955-56):17-28; and Barry Cooper, "Alexander Kennedy Isbister, A Respectable Victorian," Canadian Ethnic Studies 17 (1985):44-63.

Though Isbister's father, Thomas, an Orkney man, did not advance beyond the then normally terminal position of Postmaster in the Company service,[58] Alexander's maternal grandfather was Alexander Kennedy, Chief Factor of the Mackenzie District and a man of considerable influence in the HBC. Through Kennedy's benefaction, young Isbister at age seven was sent to school at St. Margaret's Hope in the Orkneys. His return to Rupert's Land coincided with the untimely demise of his grandfather four years later.[59] His pecuniary fortunes reduced, he attended Reverend David Jones' Red River Academy, finding sufficient familial support for his education even after his father was gored and killed by a bull at Norway House in 1836.

Isbister entered the Company service in 1838 at a time when, even though advancement to higher ranks was doubtless negatively influenced by the well-documented racial prejudices of senior officers, the prospects for "well-connected" and "talented" mixed-bloods were improving only slightly.[60] Though talented, Isbister was without a patron, since he no longer enjoyed the beneficent influence of his grandfather. At the age of sixteen he became an Apprentice Postmaster. Assigned to the remote post of Fort Simpson, Mackenzie River District, he traded there until 1840 when he assisted John Bell in establishing the Company's northernmost post, Fort McPherson, on the Peel River. Several years later Isbister published an article in the Journal of the Royal Geographical Society[61] describing a season of exploration undertaken in the Peel River district. As an apprentice postmaster,[62] rising beyond the non-commissioned ranks of the Company would have been difficult, although not impossible. Normally, however, the fortune of men whose origin was Rupert's Land, as James Anderson explains, "particularly if they had the misfortune to be educated on the Banks of Red River instead of the Thames," was to be paid at a much lower rate than Apprentice Clerks

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[58] After 1829, postmasters were regarded as "a Class which ranks in the Service between Interpreters and Clerks. They are generally persons who while filling the office of Common Labourers brought themselves into particular notice by their steadiness, and honesty and attention and were in due time raised from the ranks and placed in charge of small Posts" (quoted in R. H. Fleming, ed., Minutes of Council Northern Department of Rupert's Land, 1821-31 [London, 1940], p. 236).

[59] Alexander Kennedy died from pneumonia caused by exposure after a night of drunken revelry in London. Cooper, "Alexander Kennedy Isbister," p. 47.

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[60] See Phillip Goldring, "Governor Simpson's Officers: Elite Recruitment in a British Overseas Enterprise, 1834-1870," Prairie Forum 10 (Fall 1985):273. Of related interest is C. M. Judd, "Native Labour and Social Stratification in the Hudson's Bay Company's Northern Department, 1770-1870," Canadian Review of Sociology and Anthropology 17 (1980):305-14.

[61] The article, entitled "Some Accounts of Peel River, North America," was published in 1845.

[62] Under the constant importuning of fathers who were Company officers, Governor Simpson began using the new apprentice postmaster rank created in 1838 to provide an alternate way by which the mixed-blood sons of officers might be promoted "into the élite stream through a side door, evading London's scrutiny" (Goldring, "Governor Simpson's Officers," p. 265).

"tho' doing duty of ap[prentice] Clerks,"[63] simply because they were not born and educated outside of Rupert's Land. Understanding too well that especially without patronage, "generally half breeds are considered inferior, and few rise to high office,"[64] and knowledgeable, ambitious and dissatisfied with, but not excessively bitter[65] over, the limitations imposed upon his career by circumstances over which he had little control, Isbister quit the Company service in 1841. He returned to Red River briefly to teach before departing with his family for Great Britain in the fall of 1842.

Isbister's subsequent career in England was marked by significant achievements in academic life, educational administration and authorship. Equally significant was his sustained interest in defense of the rights of the residents of Rupert's Land from being trampled upon by the HBC. Sensing that their commercial monopoly was slipping throughout the 1840's because of the increase of illicit trading between Red River colonists and American fur and hide traders at Pembina, the Company began in 1845 employing repressive measures to suppress the free trade. In response, Métis fur traders, urged on by American fur trader

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[63] Anderson to Eden Colvile, 29 November 1852, quoted in Cooper, "Alexander Kennedy Isbister," p. 48.

[64] Donald Ross to James Ross, 3 September 1857, quoted in Cooper, "Alexander Kennedy Isbister," p. 49.

[65] Ibid.

Norman Kittson and Father George Belcourt,[66] mounted an effort to gain concrete legal status for their claims to rights of commerce, and in 1846 petitioned the British Crown to protest the unfairness of the monopoly and the perceived inadequacies of the judicial system in Assiniboia. Petitions in French and English to the imperial government saw Alexander Isbister join with William Kennedy and fellow free trader James Sinclair in challenging the British government in the name of approximately one thousand Red River petitioners.[67] Certainly not unaware of the free trade preoccupations of an emergent British liberal society, Isbister's sympathy with a similarly emergent call for reform emanating from Red River contributed to his leading a delegation carrying forward demands for a full British parliamentary inquiry into Company activities. In his subsequent lobbying of Members of Parliament and in the extensive correspondence he conducted as an unpaid agent for the petitioners, Isbister stressed the ideas that the legal validity of the charter was open to question, that the welfare of aboriginal populations was being thoroughly neglected and that the economic development of the country was stifled because settlement was not being encouraged.[68]

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[66] See Dictionary of Canadian Biography XI, s.v. "Kittson, Norman Wolfred," by Henry C. Klassen; and Ibid., X, s.v. "Bellecourt, George-Antoine," by W. L. Morton.

[67] James M. Reardon, George Anthony Belcourt Pioneer Catholic Missionary of the Northwest, 1803-1874 (St. Paul, 1955), pp. 80-82 indicates that the French petition was composed by Belcourt and had 977 signatures. An English version was prepared by Isbister but had only five signatures in addition to his own.

His effort was successful inasmuch as the Imperial government ordered an investigation. Lord Elgin, then Governor General of Canada, received instructions ordering him to look into the affairs of Red River. In response to a request made by Elgin, Major William Caldwell conducted a limited poll of the residents of Red River, the thoroughness of which satisfied supporters of the Company such as Adam Thom, but which for most residents, bore the marks of a whitewash.[69] On the basis of Caldwell's report, which favored the Company reputation in charges made against it, the British government was prepared to ignore or dismiss all charges, satisfied that there was no need for any further governmental inquiry. Isbister's initial efforts having produced no concrete results, he turned to a legal challenge of the Charter. The Colonial Secretary, Earl Grey, supported the legal validity of the Charter, but Isbister pressed for and received from the House of Commons the right to publish an address to the Crown calling for an inquiry.[70] When the law officers of the Crown informed him, however, that the Company charter could only be challenged by recourse to the courts, an option that was sure to be expensive and protracted, Isbister dropped the legal challenge to the charter and the call for an inquiry, knowing well that the costs could not be borne by the petitioners he represented. The decision indicated not pusillanimity or a lack of nerve, but a sensible choice.

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[68] Van Kirk, "Isbister, Alexander Kennedy."

[69] Bindon, "Hudson's Bay Company Law," p. 67.

[70] Rich, History of the Hudson's Bay Company, 3:546-47.

During these efforts, Recorder Thom attacked Isbister's credibility, accusing him of maliciously spreading rumors in order to undermine the Company position.[71] As an 'outsider' beyond Company control yet well-informed and possessing first-hand experience of Rupert's Land, Isbister occupied an enviable position. His reports in 1847 and 1849 to the British Association for the Advancement of Science, arguing that contact between the Company and the natives was detrimental for the latter, had a ring of authority about them. A corresponding member of the Aborigines' Protection Society and contributor to their journal, The Aborigines' Friend and Colonial Intelligencer, he continued criticizing the Company rule, pressing for an inquiry. The long hoped for 'Select Committee' was ordered by the House of Commons on 5 February 1857 in anticipation of the Company's application for renewal of their charter in 1859. As a spokesman, along with Reverend G. O. Corbett, for the opposition in the Red River Settlement, Isbister testified during the inquiries that the HBC was governing Rupert's Land in its own interest without consideration for the interests of the inhabitants. According to A. S. Morton, however, "Mr. Isbister in the witness-box proved a very mild gentleman compared with Mr. Isbister, the young lawyer of ten years before, wielding his pen on behalf of his clients."[72] Charges of Indian mistreatment, Company profiteering and abuses of alcohol were successfully met and refuted by the Company.

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[71] Bindon, "Hudson's Bay Company Law," p. 67.

Unprepared and not fully in control of the facts, Isbister appeared less than credible in arguing that the Company was standing in the way of progress by not allowing a competitive export trade to develop, while admitting that the only viable one was furs. Perhaps more telling than anything else was the evidence brought forward that he had left Rupert's Land in 1839 and had not returned since, and that "his present knowledge of the country had been gained by correspondence."[73] When he began as a legal advisor and advocate for the Red River petitioners, Isbister was an 'insider,' eager to support the cause, knowledgeable and capable of presenting the case outside of Red River. While he never lost interest in the country of his birth or lacked sympathy for those he regarded as underdogs in Rupert's Land,[74] Isbister had by 1857 ceased to be an effective spokesman and agent. As time passed and Rupert's Land changed, his experience and values were thoroughly acclimatized to the Victorian world of England, where he was engaged in numerous pursuits of self-improvement.[75] His failure to achieve more after twenty-five years of activity was not simply the result of HBC power and influence or British government recalcitrance, or of a lack of moral fibre or conviction on his part. Time and distance had made an 'outsider' of Isbister.

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[72] A. S. Morton, A History of the Canadian West to 1870-71 (London, 1939; reprint ed., Toronto, 1973), p. 818.

[73] Ibid., p. 819.

[74] When ownership of Rupert's Land was transferred to Canada, Isbister supported claims for Company officers to receive a portion of the £300,000 selling price as compensation.

The costly error of judgment by Governor George Simpson in selecting Adam Thom in 1839 as Recorder was not effectively mitigated until a satisfactory replacement was appointed on 3 February 1854. Described as a "distinguished pleader at the Canadian bar,"[76] Francis Godschall Johnson, at the age of thirty-seven, arrived in Red River to begin the difficult task of restoring confidence in the administration of the judicial system and the legal leadership the Recorder was intended to provide. While the four year tenure of Johnson was both brief and generally uneventful, the choice proved to be a sagacious one.

Several possible replacements for Thom were considered by Company officers who advised Simpson. Governor

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[75] As a student he was awarded an M.A. from the University of Edinburgh in 1858 and an LL.B. from the University of London in 1866. As a teacher and an administrator he rose to the position of headmaster at East Islington Proprietary School in 1851 and in 1858 was headmaster of Stationers Company School. As an educator he served as dean of the College of Preceptors, who supervised the teaching profession, was editor of the Educational Times for twenty years, and wrote twenty school texts.

[76] Alexander Begg, History of the North-West, 3 vols. (Toronto, 1894-95), 1:322.

Eden Colvile, expressing mild reservations, wrote that if "my friend Frank Johnson had a little more steadiness and discretion I should prefer him, as he would keep everybody in a good humour, save and except the parsons perhaps."[77] Johnson was not his personal first choice for the appointment, but Colvile indicated in his assessment of the various choices the qualities he considered necessary for the position. Describing another man whom he favored, he wrote that he was a

> manly fellow, speaks well in French & English, & has . . . as much talent & law as is requisite for this place, where I find the people like honesty & common sense quite as well as all Thom's long dissertations on General Principles."[78]

The qualities of the new Recorder met and exceeded these expectations. Johnson's complete bilingualism, reputation for probity and a felicitous demeanor assured for him a greater measure of success than that enjoyed by his combative predecessor.

Perhaps no one was happier with the appointment of Johnson than Governor Caldwell who had valiantly though ineptly attempted to serve as the settlement's judge after Recorder Thom was demoted in 1851 to clerkship of the Court.[79] Describing his efforts later he said "but it was a farce having to conduct the business; there were no lawyers there." Having ordered the unpopular Thom to stay away from the court, the Governor had no one to turn to for legal advice while conducting trials. Apologetically, Caldwell reported that the court was reduced to a "court of equity," meaning that his "object" was simply "to do justly between man and man." In hearing cases, instead of charging the jury, which he felt unqualified to do, he reported that he "merely desired the clerk of the court to read the proceedings, to refresh the memories of the jury, and I left them to decide the question."[80]

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[77] Eden Colvile to George Simpson, 22 May 1851, in Rich, ed., Eden Colvile's Letters, p. 209.

[78] Ibid.

[79] Adam Thom's official duties at the time amounted to little more than writing letters.

Educated in France, Johnson was fluent in French and quickly turned this to advantage by emigrating to Montreal in 1834 when only seventeen, as English lawyers able to speak French well were rare.[81] While he was an articling law clerk, he doubled as a translator during the Courts Martial hearings for the patriots of 1837, and on 22 November 1839 was called to the bar of Lower Canada. His work on commissions and his prominence at the bar, where he was frequently retained and reputed to be "a remarkably good speaker,"[82] won him a Q.C. in 1847 and valuable links with the powerful Tory business community of Montreal.[83] Shortly after the death of his wife in 1853, Johnson left a good practice to become Recorder of Rupert's Land, perhaps wishing to escape "painful associations."[84]

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[80] "Report from the Select Committee of the Hudson's Bay Company," quoted in Stubbs, Four Recorders, p. 50.

[81] Pierre-Georges Roy, Les Juges de la Province de Québec (Québec, 1933), p. 277.

[82] A. W. Patrick Buchanan, The Bench and Bar in Lower Canada (Montreal, 1925), p. 107.

[83] The strength of his association with them is illustrated by his involvement in the events of 1849. He

Johnson was Recorder from the spring of 1854 until the summer of 1858. During that time rudimentary cases on an uncrowded docket[85] and rendering legal advice to the Company did not tax his abilities and he was more than equal to the additional task of Governor of Assiniboia for the last three years. Fortunately for him, as Alexander Begg wrote later, during "his term of office he was . . . to escape the disagreeable duty of adjudicating in any cause wherein public prejudice had enlisted itself on either side.[86]

As a professional man in the community, Johnson commanded respect and affected a style which facilitated his entry into community life. The evidence which exists indicates that taking a leading part in the moral, social and recreational aspects of life in Red River was not

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actively opposed the 'Rebellion Losses' bill and signed the 'Annexation Manifesto.' For the latter action he was temporarily stripped of his Q.C. until 1853 when it was restored.

[84] This motive is suggested by Dale and Lee Gibson, Substantial Justice Law and Lawyers in Manitoba, 1670-1970 (Winnipeg, 1972), p. 43.

[85] On several occasions there were no cases for the General Quarterly Court at its normal meeting time. The Petty Courts were similarly quiescent.

[86] Begg, History of the North-West, 1:322.

disagreeable to him.[87] His elegant dress and grooming were appropriate for a Governor and for a man of his profession.[88] A widower when he arrived, his commitment to Red River was visibly demonstrated by his marriage to Miss M. Mills on 4 March 1856.

As a public figure who happened to be a non-practicing lawyer, he was everything that Thom had not been. His flexible approach was visibly demonstrated in his making no pretension to defend the Company's charter. When Andrew G. B. Bannatyne was arrested at Norway House in 1857 by an overzealous Chief Factor for illicit trading with the Indians and brought to Red River to answer for the alleged crime, he was immediately released by Johnson. He even supported the man's claim of false arrest and his demand for compensation.[89] He also demonstrated firm convictions when obligated by his position to do so. For example, early in 1857 Red River was all astir when Roderick Kennedy, a former Company employee circulated a petition in Red River calling for annexation to Canada. At several meetings, Governor Johnson "attempted to oppose,"[90] and successfully changed some people's minds. Most importantly, his conciliatory ways won him support from all elements of the society, including the French-speaking, mainly Métis portion. In 1856 Johnson began pressing for the Company to nominate francophone councillors to represent the Canadians and Métis in Assiniboia and his efforts were successfully concluded with the appointment of five linguistically-qualified men.[91] He was rewarded for his patience and understanding. In the annexation meetings held by Kennedy in March of 1857 for the French section of the populace, and chaired by Louis Riel, the hostility towards the Company, which Kennedy had hoped to whip up, did not translate into immediate support for annexation to Canada. In this the Roman Catholic clergy, who feared a further Protestant intrusion, found common ground with Johnson.[92] Reflecting the confidence he enjoyed from the Governor of the Company, he was described by him as "a very competent legal officer."[93] Drawn back to his legal practice in Montreal in 1858, Johnson's stay in Red River represented only an interlude in his career as a lawyer. Red River had accepted Johnson; Johnson had not accepted Red River.

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[87] P.A.M., MG2 C14, Alexander Ross Family Papers, William Ross to James Ross, 9 February 1856.

[88] According to Stubbs, Four Recorders, p. 61, he enjoyed a reputation as "the best turned-out member of the Bench and Bar in Montreal."

[89] John S. Galbraith, The Hudson's Bay Company as an Imperial Factor 1821-1869 (Los Angeles, 1957), p. 76 reports that compensation was paid.

[90] P.A.M., MG2 C14, John Black to James Ross, 8 April 1857.

Legal men were not yet a permanent fixture of community life. Far less tranquil times were on the horizon as the 1860's neared, offering greater scope for the kind of advocacy and agency which was the lifeblood of the legal profession, but as J. J. Hargrave pointed out in 1861, "no professional lawyers have yet practised at Red River."[94] Neither of Johnson's two successors in the role of Recorder, Dr. John Bunn nor John Black, were lawyers.

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[91] Marcel Giraud, The Métis in the Canadian West, trans. George Woodcock, 2 vols. (Edmonton, 1986), 2:240.

[92] Ibid., p. 261.

[93] George Simpson testimony in "Report from the Select Committee of the Hudson's Bay Company," quoted in Stubbs, Four Recorders, p. 50.

Dr. Bunn (1858-1861)[95] was an anglophone mixed-blood of demonstrated talent and broad experience in the colony. Educated in Scotland, he obtained a license as a physician from the Royal College of Surgeons in Edinburgh in 1832 and returned to Red River in 1835 to practice his profession. He was without formal legal training, but continuous membership after 1836 on the Council of Assiniboia, subsequent appointments as Sheriff and Governor of the jail, and service as a magistrate and President in the Lower District Petty Court after 1837 thoroughly prepared him to adjudicate effectively in Red River. Popular, able, sometimes innovative,[96] his sudden death in 1861 while walking the banks of the flooded Red was considered "a severe loss to the community."[97]

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[94] Red River, p. 215.

[95] For a biographical account, see Stubbs, Four Recorders, chapter 3 and Dictionary of Canadian Biography IX, s.v. "Bunn, John," by H. C. Klassen.

[96] For example, he allowed accused persons to testify in their own defence. In cases of contributory negligence, damages were divided between plaintiff and defendant. Rules for hearing evidence obtained from Indians were established. Gibson, Substantial Justice, p. 48.

Bunn's death necessitated the selection of another Recorder but, anticipating the imminent granting of colonial status to Assiniboia, the Company was slow to act.[98] A decision was made in 1862 and John Black (1862-1870) was appointed Recorder. Although not a lawyer, Black was not entirely deficient in legal training nor was he unfamiliar with his territory. As a youth Black served seven years in the office of an Edinburgh, Scotland solicitor before receiving an appointment as clerk to the newly created General Quarterly Court of Assiniboia in 1839 at the age of twenty-two. Engaged by the HBC, he was to assist Adam Thom, but these duties occupied very little of his time. His marriage in 1845 to the daughter of Alexander Christie, the Governor of Assiniboia,[99] preceded by three years his elevation to chief trader of the Red River District. His spotty performance in various managerial and accounting responsibilities provoked Governor Eden Colvile, his most earnest critic, to remark that he did not consider Black a "first-rate man of business."[100] Colvile was equally anxious about Black's notably arrogant and over-pious style which reputedly rendered residents, except for the Protestant clergy, unable to "bear the sight of him."[101] Colvile's estimation of Black did improve, but that did not prevent him from actively seeking a replacement for him. He also stripped him of his post as chief accountant of Upper Red River in 1852 after only a few years of service.

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[97] Hargrave, Red River, p. 91.

[98] Rich, ed., History of the Hudson's Bay Company, 3:812.

[99] Letitia Hargrave to her mother, 5 September 1845, in Macleod, Letters of Letitia Hargrave, p. 208.

[100] Eden Colvile to George Simpson, 26 August 1850, in Rich, Eden Colvile's Letters, p. 195.

After the death of his wife in 1854, Black began a hiatus from Red River, occupying the civil service office of Minister of Lands in New South Wales, Australia. In 1862, at age forty-five, he accepted the appointment as Recorder and returned to Red River, his sometimes irritating and imposing manners by then easily balanced by his legal and commercial experience and a more polished affability. He was warmly received[102] by the Council of Assiniboia and earned praise for his conscientious and patient exercising of judicial authority in a largely illiterate community. His approach, as he explained shortly after his arrival, was designedly flexible, recognizing

> the utter absurdity of suddenly applying the rigid maxims of law and the strict rules of legal practise to the settlement of suits among a community, whose whole habits of thought and modes of transacting business are necessarily somewhat primitive and peculiar . . . as long as the ends of substantial justice are really attained amongst us, we ought not too eagerly to desire the introduction of subtle refinements and ingenious technicalities.[103]

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[101] Ibid., November 1850, p. 200.

[102] Minutes of the Council of Assiniboia, 4 June 1862, in Oliver, The Canadian North West, p. 505.

[103] The Nor'Wester, 11 September 1862.

That Black enjoyed notable success in office is remarkable when measured by the inadequacies of the entire machinery of judicial administration. The eight years that he presided were marked by a significant erosion of the Company's authority, incidents which indicated a breakdown in law enforcement in the face of concerted illegal actions and increasingly divisive agitation initiated by newcomers who threatened the old order of Red River.

At this juncture, Red River offered few attractions to professional lawyers. The only court which dealt with serious matters was the General Quarterly Court, housed in a building far too small and arranged in a manner which emphasized these shortcomings.[104] As for legal work, Mr. William Robert Smith, clerk of the Court and Council,[105] apparently did "a great deal of routine work for private friends,"[106] while the Recorder prepared official documents like deeds and wills. On the prospects for legal practitioners, it was observed that "court practice would be as nothing to any one who devoted his exclusive attention to it, as the General Court at each of its quarter sessions seldom sits longer than a week." In fact, litigation was "extremely cheap" since such "agents as usually practice may be got for a trifle." These agents, who were often educated

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[104] Gibson, Substantial Justice, pp. 23-27 contains a good brief description of the courts.

[105] The activities of Mr. Smith are outlined by Hargrave, Red River, pp. 208-12.

[106] Ibid., p. 215.

(clergy, officers), were joined by "many ambitious orators . . . who would consent gratuitously to conduct a case for a needy friend."[107] Perhaps the most prominent of these "ambitious orators" was James Ross.[108]

James Ross was the scion of a former HBC Chief trader and historian, Alexander Ross,[109] a prominent man who had settled in Red River with his Okanagan Indian wife, Sarah. Not unlike other members of the Anglophone mixed-blood group sometimes known as Country-born,[110] James Ross came under powerful paternal influences to define success by the standards of a British and Protestant world of his father.[111] As a student, his scholastic enculturation was capped off by a distinguished graduation from the University of Toronto in 1857. After graduating, Ross apparently considered a professional career of some kind, but the persuasive presence of his church was in evidence. Writing to Ross in Toronto in 1857, Rev. John Black, the Presbyterian clergyman in Red River, offered this advice: "I do not relish the idea of your studying Law or Medicine instead of Divinity; Are not both professions overstocked the law is by no means a reputable profession; both are chosen with avowedly selfish ends."[112] Regardless of the advice he received in this matter, circumstances did not allow Ross to actively pursue a legal career before returning to Red River in 1858. When he arrived back in Red River to settle family matters arising out of disagreements over the estates of his brother William and his father, he had achieved much and must have known that his father would have approved.[113] Besides his academic awards and teaching at the elite Upper Canada College, he had married in Toronto a socially prominent daughter of a Presbyterian family, certainly a triumph for a mixed-blood man with aspirations to rise above the petty jealousies and prejudices of Red River. Canada had indeed been good to him.

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[107] Ibid.

[108] For biographical details of his life, see Leonard Remis, "James Ross, 1835-1871 The Life and Times of an English-Speaking Halfbreed in the Old Red River Settlement" (M.A. thesis, University of Manitoba, 1981); Dictionary of Canadian Biography X, s.v. "Ross, James," by W. O. Smith; and Archer Martin, "The Sheriffs of Assiniboia," Western Law Times 1 (1890):151-63, 2 (1891):1-10 and 181-87.

[109] Alexander Ross published The Red River Settlement in 1856.

[110] The term was defined by John E. Foster, "The Country-born in the Red River Settlement: 1820-1850" (Ph.D. dissertation, University of Alberta, 1973), p. 4:

> "Originating among the British born residents of Red River, possibly as a polite affectation, the term is not entirely satisfactory as its use suggests social class connotations. Apparently the term has particular reference to the mixed blood children of British born officers. Nevertheless, as the term defines a community distinct from the Métis, as it would have been recognized or understood by the community it designated, and as the term avoids the confusion in meaning and pejorative sense associated with 'Half-Breed,' Country-born appears to describe the second mixed blood community in Red River."

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[111] Jennifer Brown, Strangers in Blood (Vancouver, 1980), pp. 216-20 and Sylvia Van Kirk, "'What if Mama is an Indian?': The Cultural Ambivalence of the Alexander Ross Family," in The Developing West, ed. J. E. Foster (Edmonton, 1983), pp. 125-36.

[112] P.A.M., MG2 C14, Rev. John Black to James Ross, 9 May 1857.

[113] Van Kirk, "'What if Mama is an Indian?'," p. 130.

In Red River, opportunity was far more circumscribed but not without possibilities. Ross soon assumed the role of family leader and in the patriarchal shadow of his father was appointed salaried postmaster of Assiniboia in 1859 and Sheriff and Governor of the jail in 1862. Broadening the scope of his involvements and supplementing his income, Ross formed a partnership with two Toronto journalists[114] in 1860 and began publishing and editing the first newspaper in Red River, The Nor'Wester.[115] As the paper was constantly critical of the HBC policies and the inadequate aspects of its governance, not unnaturally its stance soon identified the paper with the annexationist goals of the small but vocal Canadian party. In the summer of 1862 the Council of Assiniboia was fearful of a Sioux attack after the perpetrators of a massacre of Americans in Minnesota fled to the vicinity of Red River to escape U.S. military reprisals. In response to a petition sponsored by the Council of Assiniboia calling upon the Imperial government to despatch troops for protection of Red River, Ross used The Nor'Wester to launch a counter-petition which called for changes in local government as well.[116] Incensed by this, the Council voted unanimously to divest Ross of all of his public appointments.[117] Ross' continued opposition to the government set the stage for his entry into an active and visible role in the legal life of Red River in 1863.

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[114] His partners were William Coldwell, his brother-in-law, and William Buckingham.

[115] James Ross retained his interest in the business until late in 1863.

[116] The counter-petition was eventually submitted to

The occasion was the arrest and trial of Rev. Griffiths Owen Corbett.[118] A fractious Church of England clergyman at Headingly, Corbett had supported Ross' counter-petition and joined Ross in outspoken criticism of the Company and in calls for annexation by Canada. In December 1862 Corbett was arrested on a warrant and the following February was charged for having attempted five times to induce a miscarriage by his servant girl, Maria Thomas, who was pregnant with his child. Pleading that he was innocent and attempting to deflect attention from the charge, he claimed to have been framed by the Company in retaliation for his earlier criticism of them. He was either clever or persuasive enough to turn a sex scandal into a cause célèbre for his followers. When the nine day trial began on 19 February 1863 lay advocates or agents, as was the custom

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the colonial secretary, the Duke of Newcastle, by Sandford Fleming.

[117] See J. L. Taylor, "Law and Order and the Military Problem in Assiniboia" (M.A. thesis, Carleton University, 1967), p. 90 and Hargrave, Red River, pp. 254-57.

[118] Frits Pannekoek, "The Rev. Griffiths Owen Corbett and the Red River Civil War of 1869-70," Canadian Historical Review 57 (June 1976):133-49 sets out his career and clerical leadership against the deleterious impact of the Protestant clergy in general. Corbett contributed to the social disintegration and sectarian strife which marked the period. The details of the trial are discussed in Stubbs, Four Recorders, pp. 147-54.

in Red River, were present in greater numbers than ever before, reflecting the importance attached to the case. Two were present for the defence, but James Ross played the leading role. Ross was joined at the counsel table by Frank Larned Hunt,[119] perhaps the first qualified lawyer to appear in that capacity in an Assiniboia Court. Together they faced John Bunn and Thomas Bunn,[120] sons of the late Recorder Dr. John Bunn, who were appearing for the prosecution. Hunt, who was a member of Corbett's parish, had left behind the practice of law in Detroit to begin farming in Red River in 1853. Aware of his background, Corbett "prevailed upon him to undertake the chief conduct of his defence,"[121] but his performance was disappointing. Almost the entire defence was handled by Ross, Mr. Hunt reportedly "merely sitting at a table taking notes and, now and then, with a series of somewhat theatrical gesticulations, putting a question to the witness, or addressing a remark to the bench."[122] Clearly embarrassed by his failure to perform well on his first 'brief' in Assiniboia, owing money on his hotel bill and fearing that "the Red River public had formed an inadequate conception of his abilities," Hunt gave a public lecture in the courthouse several days after the trial in order to retrieve "his reputation as a speaker."[123] Despite Ross' significant efforts as a lay advocate, the case went against Corbett, who was convicted, sentenced, imprisoned, but shortly after, set free by his supporters when a petition for clemency was rejected by the Governor. That he remained free and that his releasers went unpunished underscored that the authorities were powerless to carry out any unpopular verdict.[124]

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[119] Manitoba Legislative Library, Biography Scrapbooks, 2-52, obituary notice and Pioneers and Early Citizens of Manitoba: A Dictionary of Manitoba Biography from the Earliest Times to 1920 (Winnipeg, 1971).

[120] When Manitoba became a province, Thomas Bunn was among the first to be officially recognized as a lawyer.

[121] Hargrave, Red River, p. 264.

[122] Ibid., p. 271.

While the Corbett affair was in progress, Ross was engaged to act as a legal agent in a related question. The Anglican Bishop of Rupert's Land had decided to inquire independently into the affair, naming Archdeacon Hunter to conduct an investigation. Hunter's publicly asserted conclusion that Corbett was guilty as charged caused much consternation among Corbett's ardent backers, who lashed out at Hunter. Convinced that he was being seriously maligned to a degree which would "damage his character and usefulness as a clergyman," Hunter took action against the libel, singling out one individual in order to "make an example of him."[125] John Tait's reputed "eccentricities of expression" attracted a suit entered for defamation of character, asking

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[123] Ibid., p. 277.

[124] A mob set Corbett free from jail on 20 April 1863. The ringleader, Stewart, was subsequently apprehended and jailed. Governor Dallas refused to release him but indicated that a 'rescue' would not be resisted.

[125] Hargrave, Red River, p. 267.

£400 in damages. James Ross agreed to defend Mr. Tait. Hunter's legal agent was Chief Trader Bernard R. Ross. The case was set for trial in February but an out of court settlement was reached which did not favor Tait. The case was withdrawn and Tait agreed to pay the Archdeacon £100 in lieu of damages and to publicly retract all "obnoxious assertions."[126] No evidence exists of any remunerative reward for his services, but James Ross was richer in legal experience following the entire Corbett affair.

More cognizant than ever of the advantages of formal legal training, Ross departed for Toronto in the spring of 1864 to take up the study of law. He began a clerkship under John McNab,[127] a Toronto attorney, and was admitted as a student-at-law of the Law Society of Upper Canada the same year. To supplement his income, as he had a wife and children joining him, Ross turned to journalism, as was frequently the case with lawyers not yet established. Working for George Brown's Globe[128] was a natural development because of his earlier association with The Nor'Wester and his staunch support for Canada's annexation of HBC territory. During his years in Toronto and on one brief visit to Red River in 1865, Ross continued to act as a legal advisor for individuals in Red River,[129] before returning in the fall of 1869 to play a key role alongside Louis Riel in the dramatic events of 1869-70. He was encouraged to return by William McDougall, the Governor designate, because leaders with his bilingual and oratorical qualities would be required. Yet on the eve of the resistance, he was still not a full-fledged lawyer. Events, however, overtook him. His championing of the Canadian cause was abandoned in favor of unifying English and French elements perched on the brink of civil war. This meant cooperating with Riel, who appointed Ross "chief justice,"[130] and as a result, offended his former friends in the Canadian party. Isolated in Red River as a result of his seemingly inconsistent behavior and increasingly addicted to drink, he was further humiliated when passed over in the selection of the administration of Governor Archibald.[131] Demonstrating great promise but never in a position to integrate his legal talents with the pre-1870 Red River reality, Ross was an outsider and remained so even after he was admitted to the bar of Manitoba in 1871,[132] shortly before his death.

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[126] Ibid., pp. 267-68.

[127] Remis, "James Ross," pp. 107-8.

[128] He also worked for a short time during the winter of 1864-65 for the Hamilton Spectator.

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[129] A.W.C.L.H., Biography files, James Ross, includes items indicating that he acted in Quarterly Court cases Duncan and Elizabeth McDonald v. Archdeacon Hunter, 16 May 1865 and McBeath v. Andrew McDermot, 15 February 1866.

[130] W. L. Morton, introduction to Manitoba: The Birth of a Province, ed. W. L. Morton (Winnipeg, 1965), p. 36.

[131] P.A.M., MG2 C14, James Ross to Hon. A. G. Archibald, 11 March 1870 indicates that the bitterness ran deep.

[132] P.A.M., Executive Council Minutes, 8 May 1871

Throughout the 1860's in Red River a recurrent theme was agitation and uncertainty over the future status of the area. Crown colony status, annexation with Canada and American annexation were the options proposed. Two men, both lawyers, active in Red River and vicinity as the decade drew to a close, promoted their particular choice of futures for the area and at the same time engaged in legal activities in anticipation of the political and commercial, but as yet inchoate, potential of Red River. In 1866 Thomas Spence[133] arrived in Red River with his wife and others to scout the economic potential of Rupert's Land and to confirm his already optimistic and expansionist views. According to Hargrave, he apparently "became at once regarded as a politician, and lost no opportunity for representing himself as such."[134] Spence was born into a legal family in

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describes the circumstances:

> "Mr. Clarke reports that the Hon. Mr. Girard & Mr. James Ross have made special application to be admitted Attornies & Solicitors & Barristers for the Prov, & that, by the instructions of the Lt. Gov., he has examined these gentlemen & found them qualified, & it being made to appear that these cases are special, Mr. Ross having been trained for several years to the law in Toronto, without having finished his course of studies & subsequently been engaged in practise at Red River Settlement for 8 years before the Union of the Province with Canada."

[133] For biographical information, see A.W.C.L.H., biography files, Thomas Spence; Manitoba Legislative Library, Biography Scrapbooks, 1-175; John Palmerston Robertson, ed., A Political Manual of the Province of Manitoba and the Northwest Territories (Winnipeg, 1887), p. 178; and the forthcoming Vol. XII of the Dictionary of Canadian Biography will include an entry as well.

[134] Red River, p. 401.

Edinburgh, Scotland in 1832, where his father, a law partner of Lord Robertson, was later appointed to the Supreme Court of Scotland. Sometime between 1852 and 1867 he arrived in Canada from England with a party of military engineers sent to erect forts at Point Levis.[135] In Red River, he claimed to have "served for some time as a subaltern officer in a regiment of foot"[136] and then as a land surveyor in Canada, but his legal training, if any, was left undelineated. His public utterances and efforts to find support for memorials to the Imperial government to bring about a speedy Confederation with Canada were regarded in Red River with some amusement as the few with whom he made common cause were "unknown men, new arrivals, and without a stake in the country." At one generally confused meeting which became disorderly, wrote Hargrave, "the subjects discussed by the members . . . were of a heterogeneous and personal character and without any bearing whatever on the objects for which the assembly had been convened." A more concerted effort followed in the courthouse, when reportedly "an orgie was instituted, which ended about midnight in the demolition of Mr. Emerling's bar."[137]

In 1867 Spence advertised in The Nor'Wester that he was in legal practice. Indicating the range of legal work he expected to perform, he offered to prepare legal documents, wills, contracts and land conveyances, to act as an arbitrator in business disputes and to conduct legal correspondence. "As a legal practitioner," writes Hargrave, "he had certain clients," but they were not well served it seems. In criminal prosecutions in which neither counsel nor magistrate knew much law, Spence attempted to pursue the case based on "ludicrously insufficient evidence" and if opposed, he turned on judges, presenting them as lackeys of the generally unpopular HBC.[138]

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[135] Winnipeg Free Press, 28 March 1900.

[136] Hargrave, Red River, p. 401.

[137] Ibid., pp. 403-6.

An instance of this legal style is reported by James Hargrave.[139] Spence's client was an unidentified man who was visited by a creditor collecting a debt. The two men spent the night in his one-room home after drinking to excess. The wife of the host, along with her child, fled to another house after both men had lost consciousness. When the visiting creditor left, the host, noting the disappearance of his wife and child, began to "dread that something had occurred of an objectionable nature." Hearing of this, Spence sprang into action before being fully aware of the facts of the case and demanded a warrant of arrest for the creditor from a justice of the peace under the ridiculous charge of "assault and battery, with attempted rape." Appearing before a magistrate with his now discovered wife, the complainant, inspired by his counsel, was in a state of excitement and animation. The inexpert opinion of his legal advisor, Spence, contributed to an atmosphere of threats and haranguing, but the facts of the case, as the magistrate pointed out, did not support the charge and he dismissed the man with a "verbal warning." Spence received a far sterner public rebuke. The magistrate warned him that "there was an offence known to the law, named 'barratry,' and that he would do well to beware" of using the courts as a means to self-promotion.[140] Besides underlining the laughable attempts by Spence to attract public attention, the incident underscored that without skilled counsel to challenge men like Spence, the courts and community were by default reliant upon practitioners with little to offer but brashness and dubious legal qualifications.

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[138] Ibid., p. 407.

[139] See Ibid., pp. 408-9.

By the spring of 1867 Spence's legal business had not flourished. Before leaving Winnipeg to establish a retail store in Portage, he had made himself conspicuous by conveying an invitation written on the inner bark of a birch tree to the Prince of Wales, purportedly from the Indians of the settlement, to come and visit.[141] His Royal Highness politely declined. While at Portage la Prairie Spence became president of the abortive 'Republic of Manitobah'[142] in 1867, the farcical conclusion of which effectively ended his claims to act in the capacity of a legal leader.

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[140] The offence of 'barratry' was that of "frequently inciting or stirring up quarrels between Her Majesty's subjects, either at law or otherwise" (Mozley and Whitely, Law Dictionary, 8th ed).

[141] Hargrave, Red River, pp. 409-11.

[142] Spence led a group of Portage residents who were dissatisfied with their government and judicial system, and since they lived outside the borders of Assiniboia, they tried to form a government, making Spence president and

In 1868 Enos Stutsman,[143] a legless, peripatetic American lawyer, moved to Pembina.[144] He was a member of the territorial legislature of Dakota and in 1866 was appointed a United States treasury agent. In that capacity, he supervised the custom house at Pembina and occasionally visited Red River, becoming aware of its commercial potential, especially for an attorney arriving on the scene early enough to take advantage of land speculation opportunities and to act as an agent for outside interests.[145] Although a member of the bar in Illinois, thoughts of

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electing a council to make laws. The effort ended in failure when residents and the Hudson's Bay Company adamantly refused to pay taxes levied to construct a government house and jail, and the British government declared the regime unlawful.

[143] See R. Dale Gibson, et al, Attorney for the Frontier: Enos Stutsman (Winnipeg, 1983); Marjorie A. Stoa, "Enos Stutsman Influential Pioneer, Dakota Territory, 1858-1874" (M.S. thesis, North Dakota State University, 1962); and G. W. Kingsbury, "Enos Stutsman," North Dakota State Historical Society, Collection 1 (1906):350-54 for biographical information.

[144] It is unlikely that Stutsman practiced much at Pembina. However, he anticipated land speculation opportunities.

[145] Daniel Boorstin, The Americans: The Democratic Experience (New York, 1973), p. 53 refers to lawyers like Stutsman as "generalized go-getters." In the American West of the nineteenth century, he argues,

> "relations between the more and less developed areas of the world everywhere provide a fertile field for lawyers. When there is a source of capital and knowledge and know-how which draws power and profit from lands at a great distance, there are all sorts of well-paid chores which require the lawyer's techniques."

establishing a legal practice "on the British side of the line"[146] were seriously entertained after his successful debut in a British court in 1868. In the Queen v. Alexander McLean,[147] Stutsman was called on to be defence counsel in a special session of the General Quarterly Court of Assiniboia made necessary because the crime that had been committed at Portage la Prairie was beyond the boundaries and effective jurisdiction of Assiniboia. Indicted for manslaughter resulting from an altercation involving firearms after which one Francis Demarrais of Portage died, Alexander McLean's family sought the forensic skills of the only lawyer available to defend their son. Claiming to have had more courtroom experience than he did, Stutsman proceeded on perhaps his most serious case.[148]

A practical, although not entirely ethical man, Stutsman initially advised his client to flee the jurisdiction. He skillfully obtained a one month postponement in order to ensure sufficient community support for his client once the buffalo hunt had ended. When the trial began, Stutsman's advocacy skills clearly outdistanced those of the well-intentioned but ill-prepared Recorder John Black. His insistence on entering his client's plea over Black's objection and his astute management of the possible problem of prejudiced francophone jurors who he encouraged to disqualify themselves, must have alerted Black that it would be difficult to retain control of his courtroom with Enos Stutsman in it. Unaccustomed to the nonadversarial custom of the Assiniboia court in which the Recorder acted in place of a prosecuting attorney, Stutsman objected on the grounds of the inherent conflict of roles. The point was conceded and the completely unprepared court clerk, W. R. Smith, was then charged with the prosecution. Mr. Smith was no match for his wily opponent. Using false interpretations of law and procedure, Stutsman then maneuvered the court into ruling against hearing witnesses for the prosecution who might give damaging testimony and prevented the jurymen from asking questions to determine the facts of the case. In attempting to charge the jury, the irresolute judge adopted a compromising prosecutorial stance, quarrelling frequently with the defence counsel. Stutsman won an acquittal, the jury easily deciding in favor of his client, even though the evidence against McLean, had it been presented well, was strong.[149]

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[146] Stutsman to Faulk, 28 September 1868, quoted in Gibson, Attorney, p. 76.

[147] P.A.M., MG2 B4-1, General Quarterly Court Records, 25 September 1868.

[148] Gibson, Attorney, p. 81.

Winning his first case in a British court, Stutsman boasted that "the perfect success was far more grattifying [sic] to me than was the £100 fee (gold)."[150] This remarkable American lawyer became an instant celebrity in

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[149] Ibid., pp. 77-96 and Stubbs, Four Recorders, pp. 161-63.

[150] Stutsman to Faulk, 28 September 1868, quoted in Gibson, Attorney, p. 93.

HBC territory. Besides pointing out the shortcomings of the judicial system, the incident demonstrated to local residents that trained lawyers could function as very useful collaborators for those who chose to employ them. It also underlined that, as Stutsman's biographer argues, the "sudden injection" of a capable lawyer "into a previously lawyerless system, without a comparably skilled advocate on the other side, was bound to throw the system out of kilter."[151] A balance in the system was not attained until after 1870 when lawyers were present in sufficient numbers. Following his courtroom success, Stutsman promoted annexation with the United States both before and during the disturbances of 1869 and 1870, and along with other Americans, importuned Riel to seriously consider that option.[152] Riel never did.

During the thirty year span between 1839 and 1869, lawyers and legal agents intermittently active in Red River displayed a great variety of individual traits and experiences, but their combined record did not secure for lawyers a permanent niche in the community. Reporting the circumstances of Winnipeg in 1869, a resident wistfully reflected several years later:

> We had no bank, no insurance office, no lawyers, only one doctor, no City Council, only one policeman, no

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[151] Gibson, Attorney, p. 96.

[152] The best source for following the involvement of Enos Stutsman is W. L. Morton, ed., Alexander Begg's Red River Journal and Other Papers Relative to the Red River Resistance of 1869-70 (Toronto, 1956).

> taxes--nothing but freedom and, though lacking several other--so called--advantages of civilization, we were, to say the least of it, tolerably virtuous and unmistakably happy.[153]

The statement reveals that in terms of legal activity there was decidedly little which would occupy the attention of full-time professional lawyers. Neither the courts nor the local economy offered ample enough opportunities for practice, and as long as Rupert's Land remained devoted to the fur trade, the buffalo hunt and mainly subsistence agriculture and under the monopoly of the HBC, there were few opportunities to serve as agents for economic or political interests from elsewhere. Although Red River and vicinity had witnessed the intrusion of an increasing number of the "so-called--advantages of civilization," it remained at least with respect to lawyers, in a pre-professional state. There was a growing realization that as legal questions grew in complexity and importance, having a legal agent who was both learned and erudite allowed an individual to draw upon a form of intrinsic power[154] based upon skill and knowledge, which could be advantageous to a litigant. However, lawyers and legal agents were not present in sufficient numbers to offer a proper balance for a workable adversarial system or to act as a counterweight to each other. Therefore, the presence of only a few produced distortion.

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[153] The quotation from Alexander Begg and W. R. Nursey, Ten Years in Winnipeg (Winnipeg, 1879) appears in the January 1958 issue of Manitoba Pageant.

[154] The nature of 'intrinsic' power is discussed in Daniel H. Calhoun, Professional Lives in America (Cambridge, 1965), p. 4.

The presence of lawyers or laymen performing legal tasks had alerted and enhanced the perceptions of many concerning trading, civil and property rights. In the case of Adam Thom, his actions were sufficient to press the francophone Métis into the political arena during the 1840's and, drawing upon those earlier experiences, again in 1869.[155] Finally, the legal talents employed in the settlement had to first be honed and officially recognized outside the settlement--Thom and Johnson in Lower Canada, Hunt and Stutsman in the United States, and Isbister and Ross in England and Toronto, respectively, even though they were native born sons of the country. No significant alteration in the pattern would emerge until the circumstances which served to isolate Red River were removed. The events and disturbances of 1869-70, which led to the creation of the new province of Manitoba in the Dominion of Canada in 1870, changed all that. In the wake of that change in legal status, more opportunities were available for lawyers. The pre-professional stage of legal development drew to a close, but for the time-being lawyers remained 'outsiders,' not yet fully integrated into the professional, legal, political and economic world of the new Manitoba. The process of professionalization was under way, but far from complete.

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[155] Bindon, "Hudson's Bay Company Law," pp. 77-78.

CHAPTER III

INTRUDERS: ESTABLISHING PROFESSIONAL PARAMETERS, 1870-78

A high proportion of the first group of lawyers to arrive in Winnipeg in the 1870's won for themselves both an integral and prominent place in the new province. Unlike earlier Red River lawyers, who, when acting in their capacity as professional men, were 'outsiders' offering services in a community ill-prepared for them, lawyers in Manitoba after 1870 were part of the intrusion of forces which marked and propelled the broad cultural transition from a dominantly Métis settlement to one which in 1878 was "rapidly completing the transition to an industrial British-Ontario community."[1] Its isolation ending, the economy of Manitoba was increasingly influenced by the dictates of international mercantile capital, agricultural exports and a pattern of industrial capitalist concepts which altered attitudes toward time, credit, labour and property.[2] Subject to rapid change in a political sense as well,

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[1] Friesen, The Canadian Prairies, p. 195. The theme of transition towards a British-Ontarian province is most effectively presented by Morton, Manitoba: A History, chapters 9 and 10.

[2] Ibid., "Homeland to Hinterland: Political Transition in Manitoba, 1870-1879," Canadian Historical Association, Historical Papers (1979):34.

Manitoba was in 1870 a legal creation arising from the agreements reached in the aftermath of the Riel disturbances. Yet its provincial politics were unmade,[3] its leadership uncertain, its structures inchoate, its local issues undelineated and its relations with the federal government uncharted. By 1878, local political factions had begun to congeal, political debates intensified over the apportionment of economic prizes and political patronage, and dominion-provincial tensions had arisen. In the face of these changes, rudimentary governmental and legal machinery was found wanting. With provincehood achieved, the acceptance of constituted authority, the assurance of enforcement of laws and the provision of reliable court mechanisms for ascertaining property and civil rights and remedying wrongs were imperative. Responding to such apparent institutional deficiencies required the assistance of lawyers.

Lawyers became important agents in the not always orderly and sometimes misdirected attempts to assimilate the previous experiences of Red River and, at the same time, assist and coerce Manitoba to conform to modern patterns of legal, political, economic and cultural behavior in place elsewhere in Canada. Their involvement in the process of change prepared the way for lawyers to assume a privileged[4] position in a pioneer setting. In Manitoba the field of professional opportunities available to lawyers was expanding and an occupational infrastructure developing in which their influence was clearly felt, and in which their rise to prominence was assured.

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[3] The point is emphasized by F. A. Milligan, "The Establishment of Manitoba's First Provincial Government The Advance from Pro-Consular to Responsible Government," H.S.S.M. Transactions, ser. 3, no. 5 (1948-49):5.

[4] See Lewis G. Thomas, "Privileged Settlers," Ranchers' Legacy, ed. Patrick A. Dunae (Edmonton, 1986).

The professionalization of law practice was coincident with the major intrusive forces which shaped early Manitoba. In that sense, the early arrivals were "intruders," who took advantage of the opportunity to create and respond to circumstances which demanded their specialized services. Their appearance was not, however, greeted with universal and cordial acceptance. Commenting on the first group of lawyers to arrive in Winnipeg, Alexander Begg, a prominent resident of Manitoba and avid chronicler, caustically remarked that "the advent of these legal gentlemen . . . was the commencement of the misery of the people of Winnipeg."[5] Begg's cavil, dripping with ill-concealed hostility, reveals that in part "these legal gentlemen," as an aggregate group, threatened in some way the previously established leaders like Begg. In other words, they were supplanting the prerogatives of those who, as lay legal agents, had once concerned themselves with the tasks of conflict resolution, the organization and administration of justice and community advocacy; tasks which a legally-trained professional class would naturally wish to assume in the new province. Community resistance, however, did not seriously hinder lawyers in their quest for occupational legitimacy as well as wealth, power and status, within existing societal structures.

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[5] Begg and Nursey, Ten Years in Winnipeg, p. 31.

By 1878 the most prominent lawyers had employed professional, legal, political and economic avenues to make themselves a more fully integrated, if not always appreciated, component of Manitoba society. Organizing themselves in a professional way provided a continuing means for community identification and for legitimatizing their presence. The restructuring of courts in which lawyers were dominant fixtures ensured that a particular 'social space'[6] was recognized as the domain of professionals, appointment and election to public office visibly demonstrated the talents of lawyers and extended their professional influence, and responding to available economic opportunities demonstrated that professional practice was viable in Manitoba.

The absence of any attempt to regulate the activities of lawyers in Assiniboia before 1870 was no oversight, but reflected the effective limitations which necessity and community acceptance had placed upon professional services in old Red River. To that point, too few lawyers had been present to warrant passage of legislation designed to create a governing body. Recognizing that the achievement of provincehood would provide an incentive for the influx of lawyers from other Canadian provinces or jurisdictions and perhaps overwhelm earlier settlers like himself, James Ross made the earliest proposal for a change. As a member of Louis Riel's second provisional government in 1870, Ross encouraged the passage of a motion, which never took effect, that would have allowed the legislature to admit ten people to law practice once a specified fee was paid.[7] Nothing more came of his effort, but a year later, legislation governing the legal profession in the new province of Manitoba was in place.

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[6] The notion that lawyers occupy a particular social space is explored in William R. Johnson, "Education and Professional Life Styles: Law and Medicine in the Nineteenth Century," History of Education Quarterly (Summer 1974):189-92. The implications of the control of certain kinds of social space are explored in Peter Ward, "Courtship Social Space in Nineteenth-Century English Canada," Canadian Historical Review 68 (March 1987):35-62.

On 3 May 1871 Lieutenant Governor Adams Archibald,[8] himself a lawyer, gave royal assent to an "Act to regulate the admission to the Study and Practice of Law in the Province of Manitoba,"[9] which he had drafted himself before submitting it for legislative approval. His bill was not, however, the first Law Society bill to be drafted. His

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[7] P.A.M., Minutes, Meetings of Committee to Codify and Arrange the Laws, 9 April 1870.

[8] The most comprehensive treatment of Archibald's administration is Allen Ronaghan, "The Archibald Administration in Manitoba 1870-1872," (Ph.D. dissertation, University of Manitoba, 1986). Also see Richard S. Bowles, "Adams George Archibald First Lieutenant-Governor of Manitoba," H.S.S.M. Transactions, ser. 3, no. 25 (1969):75-88; Elizabeth Parker, "Manitoba's First Lieutenant-Governor," Dalhousie Review 10 (1930-31):519-24.

[9] Statutes of Manitoba, 1871, 34 Victoria, c.10. See also Edwin Loftus, "Synoptic History of the Manitoba Law Society," paper read before the Conference of Representatives of Governing Bodies, 1931, pp. 39-44.

Attorney General, an irascible lawyer, Henry J. Clarke,[10] disagreeing with Archibald's instructions which would have allowed qualified lawyers from other jurisdictions to practice in Manitoba without restriction, attempted a subterfuge. Archibald's approach reflected the view of the Prime Minister, who argued that a "man fit to practice at Toronto, Quebec, St. John or Halifax ought to be good enough for Winnipeg."[11] But, without Archibald's knowledge, Clarke substituted his own provisions. However, Archibald intercepted the legislation when "it got to the Executive Council," finding "that it provided that no person should be admitted to the Bar except such persons as he [Clarke] should approve, and certify to be sufficient." It was, according to Archibald, "a bill to make Mr. Clarke the Bar, with liberty to add to its number such persons as he should." At that point, an angry Archibald summoned Clarke to explain his actions, and as he related later to the Prime Minister, "I told him [Clarke] my mind pretty freely." Then, Archibald explained "I drafted the bill as it now stands, and sent it to the Council to be adopted as an amendment of his . . . which of course he had to do."[12]

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[10] For biographical information, see *Dictionary of Canadian Biography* XI, s.v. "Clarke, Henry Joseph" by Lovell. C. Clark; David R. M. Jackson, "A Career Stained with Every Wickedness': Henry Joseph Clarke, Manitoba's First Attorney-General," unpublished paper prepared for Historic Resources Branch, Manitoba, July 1980; Francis Ebbs-Canavan, "Manitoba's First Premier and Attorney General: Henry Joseph Clarke, Q.C., 1871-1874," *Manitoba History* 1, no. 3 (1946-49):1-11.

[11] P.A.C., MG26A, Macdonald Papers, Archibald to Macdonald, p. 77,936, 9 August 1871.

In an earlier remark to the Minister of Justice, Archibald pointed out that "being reasonable and courteous are not the strong points in the character of anyone at the head of the Bar here."[13] It was evident that Archibald was referring to Clarke. On two subsequent occasions, Attorney General Clarke tried again to restrict the admission of out-of-province lawyers with the object of forestalling the admission of more lawyers and thus creating a monopoly situation. Clarke introduced bills in February 1872 and 1873 to repeal the earlier Act which Archibald had insisted on. Clarke's bills would have prevented any new arrivals from practicing for two years since they required that newcomers complete an apprenticeship under a practicing lawyer. Lieutenant Governor Archibald reserved the new bill in 1872, pointing out to the Prime Minister his reasons for doing so:

> There are some ten men admitted to the Bar here. You can easily imagine that not many of them are of a very high rank in the profession. One of the lot is Clarke's own brother, a lad now employed as a clerk in the Post Office under Mr. Bannatyne. He was admitted, after a short examination by persons who know little more of law than himself, on producing a certificate from the Attorney-General that he had served five years in his office, confirmed by an affidavit of his own of the truth of the fact. From all the information I have been able to gather, I have reason to believe that he never studied an hour in his brother's or any other law

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[12] Ibid.

[13] Ibid., Archibald to Cartier, p. 77,897, 26 May 1871.

office.[14]

Allowing this group to restrict further entry of lawyers was unacceptable to Archibald. He exclaimed, "of the whole ten there are four who know enough law to draw the commonest contract, and probably the aggregate fortune of the whole batch would not exceed $500."[15] The Assembly eventually struck out the offending clauses but when resubmitted in 1873, the bill again proved troublesome. Lieutenant Governor Alexander Morris this time requested that the bill be reserved for the Governor General, for as he explained, the legislation "nominated fifteen Benchers several of whom are not in practice and others are of only a couple of years standing at the Bar and even less, and makes the Benchers a closed body, vacancies being, supplied by election of the Benchers." Fearing that Manitoba might otherwise be out-of-step, Morris added that, "in Ontario the system in question has been abandoned" where the Bar was, in comparison, far more "stable" and "settled" in character.[16]

As Archibald had desired from the outset, very few restrictions were placed on those who wished to practice law in Manitoba. The 1871 Act[17] stipulated that if an individual had completed a five-year apprenticeship and had been admitted to practice in Britain or any other part of Canada, or in cases where only the apprenticeship had been served, could also pass an examination set by the Chief Justice and two Manitoba barristers, they would be eligible to join the profession. In special cases, the Lieutenant-Governor-in-Council could entertain "special applications." If the applicant was deemed "duly qualified," it was possible for him to bypass the standard admission procedure. Furthermore, the Act specified that once ten persons had been granted admission, they might meet and form a "Bar Society"[18] which was to be empowered to regulate future admissions subject only to the approval of the Executive Council. Before the requisite enrollment of ten barristers had been reached, lawyers were to be admitted to practice exclusively by order-in-council.[19] The Executive Council formally relinquished this duty on 30 December 1871 when the first fifteen lawyers in Manitoba constituted the first "Bar Society."[20]

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[14] Ibid., Archibald to Macdonald, p. 781,146, 24 February 1872. His brother was Francis Clarke.

[15] Ibid.

[16] P.A.M., MG12 B1, Morris Papers, Despatch Book #3, item #1581, Morris to the Secretary of State for the Provinces, 17 March 1873.

[17] Statutes of Manitoba, 1871, 34 Victoria, c.10.

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[18] The term used in the legislation is "Bar Society." Some confusion may arise, however, as 'Law Society' is employed interchangeably in newspapers, government records and correspondence.

[19] See P.A.M., Executive Council Minutes, 8 May and 29 June 1871. In the first instance, James Ross was admitted under the special circumstances provision of the Act. He died later that summer. In the next group of applicants were Joseph Royal, Joseph Dubuc, David M. Walker, John Bain and Felix Chenier.

[20] Canada Law Journal 8 (January 1872):4; The Manitoban, 1 January 1872.

Having the Bar Society governing its own affairs meant that the cabinet was relieved of what had become an annoying task. Under the Law Society Act, the Council had experienced difficulty "defining the Special Circumstances to justify admission under the 5th sect. of the Act," having received a "great number" of applications of that kind.[21] The formation of a Bar Society contained the promise of administrative relief from the task and more rigid standards in approving admissions as the entire profession took charge of that responsibility.

Immediately choosing Henry J. Clarke as president, the members also elected a Board of Examiners with French and English representation to review the credentials of all subsequent applicants for admission. Within a year the Society had doubled in number.[22] Proposals to establish a library[23] for the members' use and the organization of a formal banquet[24] in the Opera House were among the first activities undertaken.

Claiming the prerogative of a self-governing profession, the Bar Society next turned their attention to establishing rules. Submitted on 8 July 1872, the rules of the Society were not formally approved by the Executive

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[21] Ibid., 17 July 1872.

[22] Manitoba Gazette, 31 December 1872.

[23] The Manitoban, 1 January 1872.

[24] Ibid., 25 March 1872.

Council until 28 September 1872.[25] The new rules were not unusual. For practicing barristers, membership in the Bar Society was automatic, and as in other Canadian jurisdictions the Benchers of the Society, elected by the membership, enjoyed considerable latitude in establishing and administering admissions, fees and other pertinent policies. The Manitoba Bar revealed some concern with its infant Society being taken seriously elsewhere in Canada when it agreed to recognize barristers or attorneys from other Canadian provinces provided the originating Bars were prepared to reciprocate "to the same degree"[26] by recognizing Manitoba credentials. When that was not possible, the rules permitted individuals who had five years under articles in any province of Canada, or who were graduates of a British or Colonial university (the time was reduced to three years), and who could pass an examination set by the Society, to be admitted to law practice in Manitoba. Finally, a fee of $25 was to be collected from students, $40 from attorneys and solicitors upon admission and $60 for a call to the Bar.

Normally, newly arrived lawyers seeking to be admitted were accepted as both barristers and attorneys, the latter designation being roughly equivalent in nature to the work then performed by solicitors in Ontario. For financial reasons, however, some recently arrived lawyers chose the option of first being called only as an attorney (solicitor), and later, when their personal finances were in order, also being called as a barrister. In the economically depressed circumstances of the mid-1870's, there were those who had no option.[27]

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[25] P.A.M., Executive Council Minutes, 28 September 1872.

[26] Ibid.

While individual financial distress was the principal concern for some, in order for the collective professional aims of an ever increasing number of lawyers for suitable facilities and a library to be met, a more sophisticated professional body was recognized as a partial solution. In 1877 the provincial government agreed to legislation which incorporated all practicing lawyers in the province as the Law Society of Manitoba.[28] Under the Act, no restrictions were placed on lawyers who were qualified in other parts of Canada, Great Britain or Ireland, thereby deliberately avoiding the most objectionable restrictive features of the legislation proposed previously. Those wishing to qualify in Manitoba who were 21 years of age, could do so by registering as a student-at-law at the

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[27] A typical notice of admission is one contained in P.A.M., Executive Council Minutes, 8 September 1875:

> "Application of S. C. Biggs for admission to the Bar upon the favorable report of the three judges of the Court of Queen's Bench and a satisfactory examination with regard to legal qualifications and upon production of a certificate of good moral character."

Council recommended Biggs for admission on payment of $60 to the Provincial Treasurer.

[28] Statutes of Manitoba, 1877, c.14. (This repealed the 1871 Act.)

University of Manitoba[29] and subsequently serving a five-year apprenticeship. In instances where a B.A., M.A. or LL.B. degree was earned in Canada, Great Britain or Ireland before beginning the study of law, the period was reduced to three years. Naming nine Benchers,[30] with Mr. Joseph Royal as president, the legislation anticipated the need to provide an interim leadership to draft rules for the new Society. By 17 May 1877, a subcommittee of the Benchers had met and the rules were presented to and discussed by the Society before being sent to the judges for further scrutiny.[31] The rules were formally approved at the next meeting, 21 May 1877.

By 1878 the legal profession in Manitoba was established in a fully independent fashion, their Society providing a focal point for their claims to the uniqueness and exclusivity of the services they rendered in interpreting and conveying the law. Annual membership fees of $10 for attorneys and $5 for barristers ensured both survival and prosperity for the fledgling Society.[32] The "Old Order" in Manitoba, typified by the delicate balances of Red River and the prominence of the clergy who had frequently relied on their powers of persuasion, was gradually giving way to the new arbiters of "the law," prominent lawyers, the "new high priests"[33] in Manitoba. Legitimizing their professional presence in a legal way signalled an important change in lawyer-community relations. Changes were equally dramatic in the Courts.

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[29] For the origins of the university, see W. L. Morton, One University A History of the University of Manitoba (Toronto, 1957).

[30] The nine men were: Joseph Royal, Joseph Dubuc, J. F. Bain, D. M. Walker, F. E. Cornish, Sedley Blanchard, S. C. Biggs, J. Ryan and A. Macdonald.

[31] A.W.C.L.H., A27 93, Law Society Minutes, 17 May 1877; Rules passed by the Law Society of Manitoba, with the approbation of the Judges of the Court of Queen's Bench, the Visitors of the said Society. (Finally passed in Convocation on the twenty-first day of May, A.D. 1877.) Manitoba Gazette, 31 May 1877.

Manitoba's courts were an essential component of the legal identity and occupational activity of the first legal practitioners in the province of Manitoba. Although appointments to the bench flowed from political considerations, from the outset lawyers figured prominently in the process of designing and managing the creation of the courts, effectively dominating the social space essential to their professional status and image. Once reestablished, the courts developed both character and substance, as judges and attorneys mastered their idiosyncracies, and came to understand the personalities and shifting circumstances of legal life in Manitoba. In 1878 the courts of Manitoba were still developing but in 1870 the most urgent requirement was to ensure their proper functioning.[34]

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[32] Gibson, "A Brief History," p. 32. From 1877-1882 the annual fee was $15, 1882-1889 it was $17.50 and 1889-1918 it was lowered to $7.50.

[33] See introduction to Gerald W. Gawalt, ed., The New High Priests: Lawyers in Post-Civil War America (Westport, Connecticut, 1984).

The re-organization of the courts undertaken by Riel's provisional government was responsible for imparting some confusion to the system of justice of the new province.[35] Unlike the Council of Assiniboia which regarded the terms magistrate and justice of the peace as interchangeable, Riel's short-lived government distinguished between the two and had made new appointments or commissions. Therefore, magistrates who formerly held commissions in Assiniboia, regarded their authority as terminated. This made it necessary in 1870 for Lieutenant Governor Archibald and his Executive Council to reappoint justices of the peace and Petty Court justices for the province immediately even though under the terms of the Manitoba Act, all existing laws and legal offices were to remain in force.

Until a new system of courts could be legislated into existence, a legal framework identical to that employed under the old Council of Assiniboia, which included fifteen justices of the Petty Courts working in three judicial districts, was temporarily employed. As constituted prior to 1870, the General Quarterly Court continued to be the highest court for both civil and criminal matters. During an interim period lasting until 1872, the appearance books for this court indicate a marked departure from pre-1870 practice. The names of lawyers recently arrived in Manitoba are recorded there, frequently appearing for litigants or defendants called before the court.[36]

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[34] For the nature of the courts and early personalities, see Gibson, Substantial Justice, pp. 69-73, 79-81, 94-98, 100-3; Stubbs, Four Recorders, pp. 67-88; Frederick Read, "Early History of the Manitoba Courts," Manitoba Bar News 10 (September 1937):451-55 and 467-84; E. K. Williams, "Aspects of the Legal History of Manitoba," H.S.S.M. Transactions, ser. 3, no. 4 (1948):48-61; and Gerold O. Jewers, "The Law, Lawyers and Legal Institutions of Manitoba," Manitoba Bar News 33 (August 1961):104-15.

[35] Some sense of the confusion and the remedies taken can be ascertained from numerous entries in P.A.M., Executive Council Minutes, September and October, 1870. See especially 17 and 30 September and 4 and 12 October.

Finding an interim Recorder proved to be a stickier problem than reestablishing the courts. Former Recorder John Black, who served as one of three delegates from Red River in negotiations for Manitoba's entry into Confederation and was subsequently offered the position of Lieutenant Governor or Recorder of Manitoba, refused to return to Red River, preferring instead his native Scotland. Sir George Cartier, the federal justice minister, next urged Francis G. Johnson, also a former Recorder of Rupert's Land and in 1870 a judge of the Quebec Superior Court, to accede to the government's request "to take a temporary appointment, and to go and administer justice in a province . . . only just emerged from a state of insurrection."[37] Persuading Johnson to accept the appointment involved arranging for him a leave from the bench in Quebec and providing assurances that his stay would not be a lengthy one. Judge Johnson accordingly accepted the terms and became "Recorder of the General Quarterly Court of Manitoba."[38] An arrogant man at times, Johnson was known to be hard on young, inexperienced lawyers who responded in kind with barely curbed execration.[39]

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[36] P.A.M., MG2 B4-1, District of Assiniboia, General Quarterly Court Records, 1870-72.

[37] House of Commons Debates, 6 June 1872, quoted in Stubbs, Four Recorders, p.68.

The regular concerns of the General Quarterly Court, interrupted by the Riel interregnum and administrative delays, were not dealt with between 18 November 1869 and 17 November 1870. Aware that in the aftermath of the Riel affair policing was inadequate and some criminal activity went unpunished,[40] Judge Johnson used the occasion to issue a stern warning at the opening of the Court. Indicating that he thought that it was important "the public should know from my lips . . . what the administration of justice is now," he continued, "the first thing I desire to say is that if there be any unruly spirits here who imagine that the law in any part of Her Majesty's dominions is to be over-ridden they will find, to their cost, that they are mistaken."[41] The comment seemed to indicate that the community might expect prompt and correct prosecution of wrongdoers in the future and a speedy despatch of the backlog of the criminal prosecutions pending.

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[38] Gibson, Substantial Justice, pp. 69-70 points out that this appointment might have raised a "small constitutional problem." He writes that, while

> "the federal authorities had the power under section 96 of the British North American Act to appoint judges, it was arguable that by naming Johnson 'Recorder of the General Quarterly Court of Manitoba,' they were actually creating a new court, and the establishment of provincial courts was the exclusive responsibility of the provincial government. To avoid this difficulty Johnson's appointment was confirmed by the provincial Executive Council."

[39] A.S.S.B., Taché Papers, Dubuc to Taché, 9 November 1871.

[40] A notable example was the mob murder of Elzéar Goulet.

In his opening remarks to the Court, however, the Judge explained that he would not hear criminal charges because in his view it was not legal for him to do so. Criminal trials, he argued, required the assembling of a grand jury and since the legislature of the new province had not yet dealt with this matter, it would be necessary for criminal proceedings to be delayed until the procedural snag was remedied.[42] The first Grand Jury was not summoned until the opening of the second session of the General Quarterly Court on 16 May 1871, Judge Johnson's concern having by that time been erased by special provincial legislation. As Judge Johnson subsequently explained in his opening address to the Grand Jury, the legislation had created a Supreme Court "having superior jurisdiction," but, as "the appointment of a Judge by the Executive of Canada" had not been made, the General Quarterly Court, in criminal matters during its second session, "was empowered to proceed in the same manner as the Supreme Court."[43]

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[41] The Manitoban, 20 May 1871.

[42] Gibson, Substantial Justice, p. 71 points out that "this opinion is difficult to understand, in view of the Manitoba Act's stipulation that existing laws should be preserved and the fact that grand juries had regularly been employed in Assiniboia, including the years when Johnson himself had been Recorder of Rupert's Land."

During his charge to the assembled Grand Jury in May 1871, delivered first in English and then in French,[44] Judge Johnson encouraged the jurors to underline the deleterious effect of alcohol especially in relation to criminal behavior and to call for improved regulation of it and better jail and courthouse facilities. They complied. Since the federal government had not made a decision on an appointment of a Supreme Court justice before Johnson's one year appointment expired, he agreed to remain for a second year. Archibald would have been delighted. Earlier he had written a glowing appraisal of the judge:

> I do hope the Dominion Government will find us a judge who will be equal to the position. Nobody could better do the duty than Judge Johnson. His courteous and kind manners--not less than his proficiency in the two languages--his knowledge of the law--and his acquaintance with the country, point him out as peculiarly fitted for a position requiring a union of these several qualities. If he will come, I do not see that you could do better than to send him, but if he does not meet your view, at all events send some man as much like him as you can find in the particulars I have averted to.[45]

Johnson fulfilled commitments made to the federal government by returning in the fall of 1871 to officiate in trials arising out of indictments found against individuals who allegedly supported the Fenians.[46] He also presided over an investigation into the compensation claims arising out of damages reputed to have been suffered during the Riel resistance, successfully reducing the total amount claimed from $336,000 to $85,000.[47] Shortly after what he believed would be his final return to Quebec, he was appointed to replace Archibald as Lieutenant Governor and to serve as interim judge, but vociferous objections in Parliament to the arrangement, which called for his drawing two salaries, forced a revocation of the commission after he had already set out for Manitoba. Learning of this protest at St. Paul, Judge Johnson was most unhappy, but he did agree to continue on and conduct one final session of the General Quarterly Court in the spring of 1872.[48] In his final address before the court, 28 May 1872, Johnson underscored the importance of the courts as a social space which lawyers might dominate and where the public observed them. Speaking to the legal profession, he said, "I must express not only my entire approbation of your proceedings and practise before me, but also unfeigned pleasure at the position which the profession, under the most discouraging circumstances, has assumed in this country."[49] Occasionally somewhat haughty in manner toward residents and bothered by his precarious financial standing,[50] Johnson did not regret his return to Montreal, writing to the Prime Minister that he was "never again, I hope, to visit these infernal regions."[51]

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[43] His address is recorded in Stubbs, Four Recorders, p. 72.

[44] Judge Johnson distanced himself from the vocal anti-French Canadians and renewed warm relations with the Metis which he enjoyed previously while Governor of Assiniboia. Joseph Dubuc to Louis Riel, 20 November 1870, quoted in Stubbs, Four Recorders, p. 69. Stubbs writes: "Judge Johnson is a warm partisan of our cause."

[45] P.A.C., MG26A, Macdonald Papers, Archibald to Cartier, p. 77,897, 26 May 1871.

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[46] The surnames of the three men tried were L'Entendre, St. Mathe and Villencure.

[47] The largest claim was that of Dr. John Schultz for $65,065.

[48] P.A.C., MG26A, Macdonald Papers, Johnson to Macdonald, p. 157,573, 7 May 1872.

The form that Manitoba's courts would have drew Lieutenant Governor Archibald and an influential member of his Executive Council, the first Attorney-General, Henry J. Clarke, into vigorous conflict during these first years. Archibald took the parsimonious view that a one-man "Supreme Court" to try serious criminal and civil cases was sufficient, assuming that it would also hear appeals from decisions made in regional Petty Sessions Courts. Apparently believing that the matter was "decided in Council," Archibald was incensed to find that an obstreperous Mr. Clarke had in the meantime "allowed a committee to whom it was referred, inspired by himself [Clarke], to substitute three judges for one, two of them to be County judges."[52] As Archibald explained to the Minister of Justice, his personal objections to this were twofold. If the two County Court judges were allowed to sit as an appellate court with the Chief Justice, they could be expected to sit in judgment "even appeal from themselves," thus "making in effect the Chief Justice subordinate to the County judges who could overrule his decisions." Furthermore, he was opposed for reasons of thrift to framing a "judiciary with number at the rate of one Supreme Court judge to every 3,300 of the population." Angered more by Clarke's scheming, however, Archibald reportedly insisted that the Attorney General's amendments be "struck out" in the legislature, to which Clarke complied, but apparently with "very bad grace."[53] In his altercations with Clarke over the courts and the nature of rules governing the legal profession, Archibald came to hold the view that Clarke was thoroughly unbalanced.[54] Perhaps the crowning irony of the affair was that after all the wrangling and perceived deception, the Supreme Court which the legislation had created,[55] never functioned, due to the slowness of the federal government in appointing a judge to it.

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[49] Quoted in The Manitoban, 1 June 1872.

[50] Gibson, Substantial Justice, p. 93.

[51] P.A.C., MG26A, Macdonald Papers, Johnson to Macdonald, p. 157,573, 7 May 1872.

[52] Ibid.

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[53] Ibid.

[54] P.A.C., MG26A, Macdonald Papers, Archibald to Macdonald, p. 17,909, 28 May 1871. Correspondence between Archibald and the Prime Minister indicates that at least on the question of the number of judges, Clarke may have been closer to the patronage considerations of the Prime Minister than was Archibald. For Macdonald's views on the use of patronage, see Gordon Stewart, "John A. Macdonald's Greatest Triumph," Canadian Historical Review 63 (March 1982):3-33 and Ibid., "Political Patronage Under Macdonald and Laurier, 1878-1911," American Review of Canadian Studies 10 (1980):3-26. Learning of the Prime Minister's wish, Archibald later explained apologetically that "since there was little work to do," it "seemed to me that it would have been difficult for you [Macdonald] in Parliament . . . to move for so heavy a draft upon the Dominion Treasury" (P.A.C., MG26A, Macdonald Papers, Archibald to Macdonald, 3 November 1871). Apparently, that was not a primary concern for Macdonald.

In the meantime, as provided by the legislation, Recorder Francis Johnson and the General Quarterly Court assumed the powers and authority of the Supreme Court.[56] The departure of Johnson forced the federal government to make a decision concerning the appointment of a Chief Justice for Manitoba. In the aftermath of the earlier disagreements between Archibald and Clarke over the 'Supreme Court,' Archibald conceded to his Attorney General that three justices were required and accepted legislation confirming it. Moreover, from correspondence received from the Prime Minister before the necessary provincial legislation was passed, it is clear that he understood Archibald's position:

> I quite agree with your suggestion that if you have three judges they should be able to do all the judicial work of every kind. They should sit in your Supreme Court (which, by the way, would sound better if it were called the Queen's Bench)--they should also act as Police Magistrate and, in fact, do all the judicial work in Manitoba . . . . I think that there should be a clause authorizing the judges to perform all such judicial acts and to hold such courts with reference to the Northwest Territory, as may be assigned to them by the Dominion or Parliament.[57]

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[55] Statutes of Manitoba, 1871, c.2.

[56] P.A.C., MG26A, Macdonald Papers, Archibald to Cartier, p. 77,897, 26 May 1871. The only notable immediate change that the legislation produced was to replace the Petty Courts of Assiniboia with Courts of Petty Sessions or 'County Courts' in the five counties--Selkirk, Lisgar, Provencher, Marquette East and Marquette West--then comprising Manitoba.

[57] Ibid., Letterbook #16, Macdonald to Archibald, p.

The Prime Minister also took the opportunity to lay to rest Archibald's fear that "your Attorney-General might be thought of as a judge." He wrote, "He [Clarke] certainly has not made a favourable impression here, and I do not think he has many friends who would urge his being appointed as judge."[58] Later, a retiring Lieutenant Governor Archibald left no doubts about his views when the Manitoba Executive Council recommended on two separate occasions that one of the vacant seats on the bench be awarded to his nemesis, H. J. Clarke.[59] His advice to Macdonald was unequivocal: "Whoever else you think of, don't think of him."[60]

In July 1872, Alexander Morris, a former Minister of Inland Revenue in the federal cabinet, was appointed Chief Justice of Manitoba's Court of Queen's Bench. The position was requested by Morris, whose health was failing. He had written to Macdonald in May 1871: "I would like you to send me to Manitoba as Judge. The work would be light and though an exile, the country has a future and I could be of use."[61]

537, 30 November 1871.

[58] Ibid.

[59] See P.A.M., Executive Council Minutes, 12 March and 28 September 1872.

[60] P.A.C., MG26A, Macdonald Papers, Archibald to Macdonald, p. 17,909, 28 May 1871.

[61] Ibid., Macdonald Papers, Morris to Macdonald, p. 113,776, 18 May 1871; Morris' nomination was not a foregone conclusion, as Macdonald explained, "Morris is an Upper Canadian nomination, and I fancy that Quebec and the Maritimes will each set up claims for a share in the Bench

Expecting that he would have two puisne judges sharing the bench with him, when sworn in in August, Morris was alone until late in the year. Revising the federal electoral lists was his first duty as Chief Justice and was an occasion for him to travel about the new province. In September he witnessed the federal election riots in Winnipeg and recommended the formation of a dominion police force to keep the peace, but no action was taken. According to his biographer, Morris wished to see a peaceful, stable Manitoba based largely on the Ontario model, "with an acquiescent and cooperative French population."[62] In the face of continuing skirmishes between the Métis and settlers from Ontario in the aftermath of the Red River resistance, Morris faced a considerable challenge. That he envisioned the courts playing some role in meeting this challenge is evident from his actions and correspondence.

Morris intended opening the Court of Queen's Bench as soon as possible after his arrival, but efforts to hold sittings of the County Courts were delayed by the tactics of the Attorney-General Clarke. Dissatisfied that the federal government had not appointed the remaining two Queen's Bench judges as provided for in the legislation, Clarke encouraged the Executive Council to pass a resolution pointing out to the federal government that even though litigation was

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there" (Macdonald Papers, Letterbook #18, Macdonald to A. H. Meyers, p. 227, 18 July 1872).

[62] Dictionary of Canadian Biography XI, s.v. "Morris, Alexander," by Jean Friesen, p. 608.

backlogged, the County Courts would remain inactive until the judges were appointed.[63] Morris did not agree with such confrontationist tactics.[64] For his part, he did not delay the opening of the Court of Queen's Bench. When it began 8 October 1872, he sat alone.

His address to the Grand Jury illustrates the importance he attached to fashioning a legal system for Manitoba and his own understanding of the historic significance of the moment:

> In years to come it will be looked back upon as one of the landmarks in the history of the rise and progress not alone of this Province, but of the North-west, to which it is the portal. The establishment of social institutions, the laying the foundation of law and order, are always eras in the history of a new country; and respect for the laws, and due and orderly regard for the requirements of the civil power, are prominent characteristics of races who are under the British supremacy.[65]

The development of the country, by which lawyers like Morris stood to gain, hinged on assurances that the law and legal institutions would be predictable and facilitative. Morris voiced his ideas as postulates:

> As an agricultural country, it must take the highest rank. But, to secure that rapid development which its advantages entitle it to, and to attract that great influx of population which its natural advantages fit it for, there must be stability in the institutions of the country, and there must be confidence that British law

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[63] P.A.M., Executive Council Minutes, 28 September 1872.

[64] P.A.C., MG26A, Macdonald Papers, Morris to Macdonald, p. 113,825, 25 September 1872.

[65] Address reported in Canada Law Journal 8 (8 October 1872):262.

> and justice will be found in full and entire force.[66]

He noted as well the interdependence of the bench and bar:

> I look to the Bar of Manitoba for their aid in the discharge of my duties. The esprit de corps, inseparable from over twenty-one years at the Bar, will naturally lead me to respect and uphold the privileges of the Bar, though I will be ready, at all times, while treating the Bar with all courtesy, to uphold the dignity of the Bench.[67]

Perhaps Morris was also sounding a cautionary note, as the first order of business when the Queen's Bench convened was to decide on indictments arising out of actions during the federal election riots. Leaving aside the political overtones involved, the proceedings accentuated the ethnic divisions extant as a French-Canadian prosecutor, Joseph Dubuc,[68] faced the defender of the accused anglophones, Frank E. Cornish. Morris remarked that since the majority of lawyers in Manitoba at the time were from Quebec, the question of which procedures to follow was a real one:

> In the court, I have had a conflict of authorities and practices--the old Assiniboia ideas--the Ontario and the Quebec . . . . Fortunately, the legislature here, adopted English practise and English law, and I . . . have quietly enforced both, and have carried with me the French Bar."[69]

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[66] Ibid.

[67] Ibid.

[68] For biography, see Maureen McAlduff, "Joseph Dubuc: Roles and Views of a French Canadian in Early Manitoba," (M.A. thesis, University of Ottawa, 1967) and Edouard Lecompte, Un Grand Chretien, Sir Joseph Dubuc, 1840-1914 (Montreal, 1923).

[69] P.A.C., MG26A, Macdonald Papers, Morris to Macdonald, p. 113,840, 10 October 1872.

In January 1873, Morris reported to the Prime Minister that "Royal and Co. were intriguing in the adoption of the French Code;"[70] but that effort had been effectively forestalled earlier, during the court's first session, when Morris had proposed applying six English rules of practice and procedures.[71] The selection of puisne judges was also considered with a view to bicultural considerations. As early as September, Morris wrote to Macdonald:

> I trust you will give me as colleague a good able Ontario lawyer. There is conflict going on all the time between the Quebec and Ontario ideas of law, and as one of the judges will doubtless be Lower Canadian, I attach a good deal of importance to having a reliable associate.[72]

Morris looked forward to the two puisne judges being appointed to the Queen's Bench for personal reasons as well, as his own health was poor and he found that "the place is so very expensive that the salary is wholly inadequate."[73] He was only filling in temporarily for a vacationing Lieutenant Governor Archibald, but it seemed most unlikely that Archibald would return. Realizing this, Morris requested a release from both his judicial and administrative duties. Reflecting the normal pattern of patronage solicitation, Morris wrote to Macdonald, "If Archibald does not come back, I wish you to offer me the appointment as a compliment, but you may understand that I will decline."[74] Citing his deteriorating health as the reason, he continued, "I may be compelled to ask you to find me some quiet nook in Ontario or Quebec where I can vegetate."[75]

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[70] Ibid., 16 January 1873.

[71] Ibid., p. 113,840, 10 October 1872.

[72] Ibid., p. 113,825, 25 October 1872.

[73] Ibid.

His overt reluctance to accept a taxing position was overcome soon after, however, when he agreed to accept the position of Lieutenant Governor of Manitoba.[76] Apparently satisfied by his improved health, a guaranteed salary of $10,000 per year, an assured long-term lease on Government House, a promise of a Q.C. appointment and another position when his tenure ended, Morris resigned as Chief Justice.[77] The judicial vacuum created was partially filled by the appointment to the Queen's Bench of two puisne judges who were sworn in during December 1872.[78]

Archbishop Taché was deeply concerned about the religio-ethnic overtones of the impending selection. The Prime Minister reassured him: "You see that we have given you two Catholics as Judges. By and by we must give you a Protestant Chief Justice to balance them; care however will be taken that a man of as conciliatory manners and prudence as Mr. Morris will be selected."[79] Though pressed from all sides to accept names for the selection of judges, Macdonald followed his original political instinct that he must have one man each from the Maritimes and Quebec.[80] J. C. McKeagney of Nova Scotia and Louis Bétournay of Quebec satisfied those political considerations but, unfortunately, little else.

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[74] Ibid., Morris to Macdonald, p. 113,852, 15 October 1872.

[75] Ibid.

[76] P.A.M., MG12 B1, Morris Papers, Lt. Governor's Despatch Book #3, p. 128, 25 December 1872.

[77] P.A.C., MG26A, Macdonald Papers, Morris to Macdonald, p. 113,933, 5 December 1872.

[78] Ibid., p. 113,966, 21 December 1872.

McKeagney,[81] a Nova Scotia lawyer active in provincial and federal politics, had cut his judicial teeth as a Cape Breton probate judge and surrogate in the Court of Vice-Admiralty, but was ill-prepared for his Manitoba appointment. His appointment was in fact a reward for unsuccessfully contesting the 1872 federal general election in order to split a constituency vote. Macdonald probably deliberately misled Alexander Morris when, shortly after appointing McKeagney as a puisne judge on 7 October 1872, he communicated in a telegram that "I understand that he is a pretty fair lawyer and will help you to dispose of all the small business of the Courts."[82] Macdonald later refused to consider McKeagney for a Nova Scotia appointment and confided to another individual that "he is still less fit for Manitoba where the situation is much more difficult, the duty much more complex and the state of law much more confused."[83] A contemporary described McKeagney as a "right-minded and conscientious non-entity--or at best an old woman."[84]

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[79] A.A.S.B., Taché Papers, #4480, Macdonald to Taché, 24 December 1872.

[80] P.A.C., MG26A, Macdonald Papers, Letterbook #18, Macdonald to A. H. Meyers, p. 227, 18 July 1872.

[81] His biographer, K. G. Pryke is critical of him, writing, "McKeagney's now faint reputation in Manitoba would indicate that he was barely competent either as a lawyer or as a judge during that phase of his career" (Dictionary of Canadian Biography X, s.v. "McKeagney, James Charles," p. 476).

[82] P.A.C., MG26A, Macdonald Papers, Letterbook #19, Macdonald to Morris, p. 16, 24 October 1872.

As the second sitting of the Court of Queen's Bench commenced in January 1873, McKeagney's claims to be bilingual were found to be false. The opening charge to the grand jury was delivered in English even though the Queen's Bench Act[85] specified that judges must be bilingual. Moreover, it was Morris who had to write the French charge.[86] Reporting on McKeagney's incompetence, Morris wrote: "McKeagney's want of knowledge of it [French] is most embarrassing. He is an honest loyal old man, of the most mediocre abilities and very little law."[87] When faced with the necessity of addressing petit juries partly composed of francophones, McKeagney was reduced to having the prothonotary, who was also by law expected to be bilingual, translate the charge. Defence counsel voiced loud objections to this practice,[88] but this was to no avail, as the Prime Minister and the provincial Executive Council closed ranks on the issue, eventually arguing that judicial bilingualism was not necessary.[89]

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[83] Ibid., Letterbook #17, Macdonald to Archbishop L. Connolly of Nova Scotia, pp. 650-51, 6 January 1873. In a letter to the same individual, 9 October 1872, confirming the appointment, Macdonald had written, revealing his reservations about the 57 year old McKeagney, "My only fear is that . . . he is too old an oak to be transplanted at fifty" (Ibid., Letterbook #18, Macdonald to Connolly, 9 October 1872).

[84] Ibid., Letterbook #17, Gilbert McMicken to Macdonald, p. 110,796, 8 February 1873.

[85] Bétournay had to deliver the charge in French. Statutes of Manitoba, 1871, 34 Victoria, c.3, s.5 stipulated that appointments of Chief Justice or puisne judges were invalid unless individuals were able to "speak both the English and French languages."

[86] P.A.C., MG26A, Macdonald Papers, Morris to Macdonald, p. 113,998, 16 January 1873.

The appointment of Louis Bétournay[90] was less troublesome linguistically, but only slightly more distinguished. Bétournay, the first francophone to be appointed a judge in a superior court in the West, had no prior judicial experience and owed his elevation to the bench solely to his political connections, having practiced law in a firm with George-Étienne Cartier.[91] Explaining the appointment to Morris, the Prime Minister wrote: "He is a very nice gentlemanlike fellow and will supply the French element to your Bench." Aware of his almost total lack of familiarity with English civil law, Macdonald thought him "young enough to read up sufficient English Law to make him fit for the appointment."[92] That is what Bétournay set about to do immediately upon his arrival, and in preparation for his duties, Morris reported, "He has got all my books and is going to work."[93] However, Bétournay was tackling an impossible task, despite Morris' optimism in claiming that he "is sharp and will get on by and by."[94] Another observer was less sanguine, characterizing him as "volatile, light and jolly . . . but not up to the law."[95] Despite urbane ways and a fondness for fine horses, he did not endear himself to the French-speaking community, partly due to the role he played in the highly charged and political trial of Ambroise Lépine.[96]

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[87] Ibid., p. 114,075, 25 February 1873.

[88] E. K. Williams, "Aspects of the Legal History of Manitoba," pp. 59-60; Canada Law Journal IX, new series (October 1873):279.

[89] Gibson, Substantial Justice, pp. 102-3.

[90] For biography, see Dictionary of Canadian Biography X, s.v. "Betournay, Louis," by George F. G. Stanley; and J. J. Lefebvre, "Louis Bétournay (1825-1879), Premier Juge Canadien-Francais d'une Cour Superieure dans l'Ouest Canadien," Bulletin de Recherches Historiques 63 (1952):29-31.

[91] P.A.C., MG26A, Macdonald Papers, H. L. Langevin to Macdonald, p. 96,806, 25 October 1872, wrote "Will you kindly recommend him as a Queen's Council first.

Although the appointment of the two puisne judges made it possible for the new County Court system to begin by February 1873, with each of their Lordships "presiding over panels of several magistrates in each county,"[97] things did not run smoothly. The federal government was slow in finding a man to replace Morris as Chief Justice. Lacking a "good chief"[98] to act as mentor and advisor, the two inexperienced judges were forced to perform alone the normal magisterial duties and to preside at numerous sittings of the Court of Queen's Bench so that an accumulation of backlogged criminal cases could be cleared away.[99] From the outset, Morris began calling for a speedy appointment of a Chief Justice to remedy the situation, as he complained, "they [McKeagney and Bétournay] did not (though I have to say it) keep up the prestige I had by good justice been able to give the previous term."[100] There was soon friction between the two judges as well. "Bétournay and he don't sit together any longer, in consequence of McKeagney's charging a jury contrary to Bétournay's view."[101] That some antagonism would develop is not surprising. It appears Bétournay was attempting to distance himself from his less competent colleague. Nonetheless, according to Morris, brazen lawyers like Cornish and Clarke were able to "bully them both" with ease.[102]

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[92] Ibid., Letterbook #19, Macdonald to Morris, pp. 149-50, 8 November 1872.

[93] Ibid., Morris to Macdonald, p. 114,014, 25 January 1873.

[94] Ibid.

[95] Ibid., McMicken to Macdonald, p. 110,796, 8 February 1873.

[96] Lépine, a principal lieutenant of Louis Riel, stood for trial in 1873, charged for his part with the execution of Thomas Scott. P.A.M., RG4 A67, Court of Queen's Bench Court Docket, 3 December 1873.

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[97] Gibson, Substantial Justice, p. 103. A year later, both judges complained that they had not been remunerated:

> "We respectfully desire to inform His Excellency Governor Morris that unless supplied with funds to defray our expenses it will be wholly out of our power to hold the County Courts.
>
> Our outlays on circuit for the past year are nearly one thousand dollars each, and as yet we have not received one cent by way of our indemnity" (P.A.M., MG12 B1, Morris Papers, item #652, McKeagney and Bétournay to Morris, 3 March 1874).

[98] P.A.C., MG26A, Macdonald Papers, Morris to Macdonald, p. 11,398, 16 January 1873.

[99] The Manitoba Gazette indicates that sittings were held in June, September and November.

[100] P.A.C., MG26A, Macdonald Papers, Morris to Macdonald, p. 114,014, 25 January 1873.

Calls for filling the vacant Chief Justiceship with a man "capable of speaking both . . . languages with fluency," became more urgent and frequent.[103] There was no question of either McKeagney or Bétournay being promoted to Chief Justice on Morris' retirement. To ensure that was the case, Attorney General H. J. Clarke, "spent part of 2 days berating them as judicial weaklings" during a legislature session.[104] The situation remained unchanged until the appointment of Chief Justice Edmund Burke Wood[105] on 11 March 1874.

Flawed, yet talented, Wood's was the most commanding personality occupying the legal landscape of Manitoba at the time. A prominent Brantford litigation lawyer and experienced provincial and federal politician, Wood's career before his move to Manitoba had combined politics with the business of railway promotion. His physique was imposing, even at age 57. One-armed, because of a shooting accident on his father's farm,[106] yet able to swing a cricket bat,[107] Wood was big, had a booming voice which had earned him the sobriquet "Big Thunder,"[108] and was known to possess an abrasive style. A Liberal member of the House of Commons during the Pacific Scandal and reelected following the resignation of John A. Macdonald's Conservatives, he was passed over by Alexander Mackenzie when forming his Liberal cabinet. His compensating reward, however, came in the form of an offer of the Chief Justiceship of Manitoba, which he was forced to accept for personal reasons.[109] Wood arrived in Winnipeg in June to commence his duties.[110] Two months later the Prime Minister wrote to Lieutenant Governor Morris, rationalizing his selection of Wood by pointing out that "he is perhaps too impulsive for a judge but that is a good quality in a new country."[111]

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[101] Ibid., Morris to Macdonald, p. 114,144, 26 June 1873.

[102] Ibid.

[103] P.A.M., Executive Council Minutes, 28 February 1873.

[104] Roy St. George Stubbs, "Hon. Edmund Burke Wood," Manitoba Bar News 34 (December 1962):109-40.

[105] For additional biography, see Dictionary of Canadian Biography XI, s.v. "Wood, Edmund Burke," by Daniel Livermore.

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[106] Richard Armstrong, "The Hon. Edmund Burk [sic] Wood, Late Chief Justice of Manitoba," The Barrister 1 (February 1895):114 explains the circumstances of the accident.

[107] Free Press, 17 July 1876, reports that the legal profession took on the city club in a cricket match and lost.

[108] There are two versions of the source of the appellation. Pierre Berton, The National Dream: The Great Railway, 1871-1881 (Toronto, 1970), pp. 127-28 claims Wood was given the name "because of his roaring speeches, which came freely garnished with scriptural references and resounding passages from the great orators and poets." Another version has it that in the case of Queen vs. High Flyer, he defended an Indian man charged with manslaughter and

> "when he came to address the jury, he gave his personality the widest scope. He first dilated upon man's inhumanity to man, and especially the inhumanity of white men to red men. . . . The Court House was filled with Indians, who were there to stand by their brother, and as they listened to Wood paint in graphic language their wrongs, it was with difficulty they could be restrained from scalping the entire jury, and were probably persuaded from doing so by the assurance that Wood would be sure to get High Flyer off, which sure enough he did" (Armstrong, "The Hon. Edmund Burk Wood," pp. 115-16).

The position of Chief Justice had been vacant for over a year when Wood was appointed. During that time the dignity of the bench had fallen in the public's estimation and it was reflected in the press. An editorial[112] describes the court:

> Ten o'clock is the hour at which the court is supposed to open; rarely, however, does this take place before eleven, and sometimes indeed not 'till much later. Seldom then does it sit more than an hour before there will be an intermission of from two to four hours, known in Court parlance, as a 'half-hour's recess.' After this, perhaps a couple of hour's work will be done, and then the Court will be adjourned till tomorrow at ten o'clock.

In the very beginning of his tenure, Wood, an excellent lawyer, restored a dignified aura to the superior courts. In a reply to congratulatory greetings extended to him at the opening of the assizes and reported in The Manitoban, 20 June 1874, Wood gave an indication of the importance he attached to creating a professional space to which lawyers might lay claim. "Respect for the Bench, and confidence in its decisions, were the first principles to be established in every Court." This was necessary, he had explained, because "where they were lacking it was impossible that the Bar could be prosperous or even maintain its standing among the learned professions." The courts were, in other words, an important showcase for the talents of legal practitioners encompassing both the bench and the bar. Professional acceptance in the community depended on the prestige and authority the public attached to their actions.

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[109] An indication of his collapsed fortunes is that he accepted the position of Chief Justice at a stipend of $5,000 per annum. In 1863 his income was reported as between $8,000 and $10,000 per annum. Armstrong, "The Hon. Edmund Burk Wood," p. 116.

[110] In order to be a judge, he had to be a member of the provincial bar. He was admitted by Lieutenant Governor-in-Council 9 June 1874.

[111] P.A.M., MG12 B1, Morris Papers, item #126, Alexander McKenzie to Morris, n.d.

[112] Manitoba Free Press, 22 November 1873.

Though Wood would soon become a controversial figure, his first trial was an impressive debut and involved in some way virtually all the prominent legal men in Manitoba. The occasion was the trial of Ambroise Lépine,[113] Louis Riel's lieutenant and second-in-command in the resistance of 1869-70. Lépine was arrested in September 1873 after Frank E. Cornish,[114] the flamboyant ex-mayor of

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[113] See Gibson, Substantial Justice, pp. 115-18; T. P. Foran, Trial of Ambroise Lépine at Winnipeg for the Wilful Murder of Thomas Scott (Montreal, 1874); B. B. Cooke, "Famous Canadian Trials: v. Ambroise Lépine, Riel's Lieutenant," Canadian Magazine 45 (May-October 1915):57-61.

[114] For biography, see Dictionary of Canadian Biography X, s.v. "Cornish, Francis Evans," by Hartwell Bowsfield, and Ruth Swan Rannie, "Frank Cornish--The Man,"

London and a boisterous, yet capable, lawyer in Winnipeg, joined with John Schultz and other anti-French elements who were opposed to any policy of reconciliation designed to minimize the antipathies of the past. Alarmed that political authorities were prepared to allow wrongdoers to go unpunished in order to soothe tensions, Cornish assisted in seeking the arrest of Riel and Lépine by furnishing an information charging them with the murder of Thomas Scott. Dr. J. H. O'Donnell,[115] a justice of the peace, issued the necessary warrant for arrest without, it seems, fully appreciating the political nature of his action. Shortly afterwards, Lépine gave himself up.

When Lépine appeared in court on the indictment for murder during the November assizes in 1873, Mr. Justice McKeagney presided and H. J. Clarke conducted the prosecution.[116] Joseph Royal and Joseph Dubuc, lawyers associated with the French element, were counsel for the defence. Taking advantage of the weakness of the presiding judge, Dubuc claimed that the Court did not have jurisdiction to try the case, arguing that the offence had occurred before the court's inception. Clarke, acting for the Crown, demurred. Reserving judgment on the plea,

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Manitoba History (Spring 1985):29-30.

[115] Author of Manitoba as I Saw It 1869 to Date (Toronto, 1909).

[116] Dependent on Francophone support, Attorney General H. J. Clarke wanted to avoid this kind of prosecution, but O'Donnell's actions placed him in an awkward and unwanted prosecutorial stance.

McKeagney carried the matter over to the next assizes in February. In February he again avoided making a decision that could potentially split the community and place himself at the center of a maelstrom. He announced that his decision would be delayed another term because he lacked the competence to decide. Hearing this, Clarke reportedly lost his temper with the irresolute judge whom he accused of stalling until a chief justice was named.[117]

The undecided question of jurisdiction was the first issue Wood inherited shortly after his arrival in June of 1874 and he resolved it quickly. The matter was remanded to October when Chief Justice Wood, sitting with two puisne judges, decided that the Court was within its proper jurisdiction in hearing the Lépine case. By the time the trial began in October, the government had changed and Clarke was no longer Attorney General. Joseph Dubuc had become Attorney General and accordingly turned over the prosecution to Frank Cornish and Stewart Macdonald, since it would not have been proper for him to change sides, having previously acted for the defence. Joseph Royal and J. A. Chapleau, a prominent member of the Quebec bar, appeared as Lépine's defence counsel. As provided by the law, the twelve man jury was composed equally of francophones and anglophones.

The case generated a high level of interest, and the legal practitioners of the bench and bar played to a courtroom packed with spectators each day.[118] Politically, there was much at stake in the thirteen day trial during which many prominent witnesses recounted their recollections of the events surrounding the Resistance and alleged murder. Chapleau, who had been briefed in Montreal before the trial by Riel himself,[119] and was privately supported by Dubuc, knew very well the broader implications of the trial's outcome. That, combined with a reputation for oratory[120] which had preceded him, ensured a large audience for his address to the jury in defence of his client.

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[117] P.A.M., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, p. 155.

The performance of everyone involved would contribute in some way to the resolving of the case, but in this highly charged atmosphere, professional reputations were also on the line. Realizing this, Royal seized the moment. Knowing that Chapleau's address to be given in French was crucial, Royal had agreed to defer to him. Royal was to first briefly address the jury in English. Chapleau was to follow him and speak at length in French.[121] But, to the immense chagrin of both Chapleau and Dubuc, Royal used the evening to hold the floor for three hours.[122] When he had finally given up the floor to Chapleau at 11:00 p.m., the Montreal attorney was angry, but continued in French for two hours, reported Dubuc: "Il s'éleve aux plus hautes régions d'eloquence, et prononca un des plus beaux discours de sa vie."[123]

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[118] P.A.M., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, p. 196.

[119] Ibid., Lachapelle to Dubuc, 28 September 1874. See also K. J. Munro, "L'Ouest dan la penseé politique de Chapleau," Revue de l'Université d'Ottawa 47 (1977):413-26.

[120] L. O. David, Mes Contemporains (Montreal, 1894), p. 29.

[121] P.A.M., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, p. 196.

In his first and most important case as Chief Justice, Wood forcefully charged the jury in English,[124] leaving little doubt as to what verdict he expected.[125] His performance asserted the authority of the bench and enhanced his stature at the same time.

> For five hours yesterday . . . Chief Justice Wood marshalled legal fact after fact, and in one of the ablest charges, if not the ablest, ever given to a jury in Canada, expounded the law clearly, powerfully, and exhaustively, so that a child might have understood him.[126]

Even though the jury had six French-speaking members, after only three and one half hours, they found Lépine guilty. Dubuc, Chapleau and Royal, who were confident of an outcome in their client's favor, and thinking that the jury would be sequestered for some time, went to dine at the home of J. A. N. Provencher.[127] With none of the defence counsel present, the jury returned to the courtroom in the evening to deliver their verdict. Dubuc described the effect on the assembled diners when they heard the news by messenger. "Une cartouche de dynamite explosant au milieu de nous n'eut pas produit un effet plus saisissant. Tous se levèrent le table abasourdis."[128] Already angry that Wood had allowed the jury to render a verdict without defence counsel present, Dubuc was angered further when he heard of Wood's remarks to Lépine during sentencing. Lépine was told not to expect any mercy, although the jury had recommended it.[129] Sympathetically linked to the French-speaking element whom Lépine represented, Dubuc was subjected to intense criticism of his conduct as Attorney General by partisan newspapers, but even Wood later defended Dubuc's propriety in the proceedings.[130] As for Lépine, political pressures led the federal government to commute his death sentence to two years imprisonment just four days before he was to be executed.

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[122] McAlduff, "Joseph Dubuc," pp. 117-18; See Royal's address in Le Métis, 5 December 1874.

[123] P.A.M., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, p. 200.

[124] Prothonotary Daniel Carey gave simultaneous translation in French.

[125] The Nor'Wester, 2 November 1874.

[126] Free Press, quoted in Gibson, Substantial Justice, pp. 116-17.

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[127] Provencher was a lawyer and a nephew of Bishop Provencher. He arrived in Manitoba in 1870 with William McDougall and later was appointed Indian Commissioner. His work in the latter capacity is the subject of E. Brian Titley, "J. A. N. Provencher: A French-Canadian Carpetbagger in Manitoba," paper presented to the Canadian Historical Association Meeting, University of Manitoba, June 1986. See also, Dictionary of Canadian Biography XI, s.v. "Provencher, Joseph Albert Norbert" by Kenneth Landry.

[128] P.A.M., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, p. 205.

[129] Ibid., pp. 207-9.

[130] Le Métis, 21 November 1874.

The high standards set by the Chief Justice in the Lépine trial were soon eroded, however, as his personal weaknesses became apparent. Finding it difficult to live within his means in Manitoba and in order to build a palatial residence, Wood borrowed money from Dr. John Schultz shortly after his arrival in Manitoba, and he was rumored to be deeply in debt. Hearing of this deal, Prime Minister Mackenzie expressed his concerns to Alexander Morris, writing, "I hope this is not true as I would not doubt that person [Schultz] had purposely intended to lay the Judge under obligations to him.[131] Mackenzies' fears were partially confirmed when Morris replied that "I fear he is in deep water. I know he had no means when he came here. He then bought from Schultz a lot and unfinished home, which the latter was to finish for him, but eventually Wood took it into his own hands and completed it."[132] Morris estimated the cost at between $7,000 and $8,000 and speculated that "unless his brothers helped him . . . I fear the popular impression is too true." Wood's fiduciary indiscretions continued. In May 1874 Mackenzie was again writing to Morris: "Mr. Wood sent me a distressing telegram a few days since about his personal affairs."[133] All that Mackenzie was able to do for him, however, was "increase the allowance for travelling expenses." That was not enough to avoid the appearance of favoritism toward Schultz and ran the risk of undermining public confidence in his judicial authority. Shortly afterwards, Schultz appeared before the Chief Justice on a charge of perjury arising from another court action involving a disputed election. The ruling in Schultz' favor in this interlocutory judgment and the behavior of the Chief Justice confirmed suspicions of an obligated bias,[134] according to the editor of the Free Press, William Luxton. Sensitive to the criticism, Wood fined Luxton for contempt of court,[135] but the damage was already done.

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[131] P.A.M. MG12 B1, Morris Papers, Lieutenant Governor's Collection, item #139, Mackenzie to Morris, 11 December 1874.

[132] Ibid., item #141, Morris to Mackenzie, 25 December 1874.

Wood's reputation was damaged further when he engaged in political disputes and was criticized for making an anti-federal government speech on a street corner.[136] Accused of poor judgment and political bias, Wood wrote denials to the papers in a misguided attempt to defend his reputation.[137] Importuned by Wood's constant demands for financial assistance and aware of the political embarrassment he could cause, Mackenzie wrote in exasperation, "his foolish extravagance will lead government and himself into serious difficulty . . . . I fear his course has already interfered with efficient discharge of his duties."[138] When Lieutenant Governor Morris was granted a leave of absence early in 1876,[139] it was with some relief that Prime Minister Mackenzie did not find it imperative that he name Chief Justice Wood as a replacement.[140] Concerns about Wood's tarnished stature continued the following year. Apparently, ""when proceeding to discharge his duties in connection with the County Courts," it was reported that Wood, "on two separate occasions in the last 12 months," had fallen "into habits of public intoxication thereby bringing discredit upon the judiciary of the Dominion and creating a want of confidence in the administration of justice."[141]

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[133] Ibid., item #152, Mackenzie to Morris, 28 May 1874.

[134] The judgment in R v. Schultz was published in the first volume of law reports in Western Canada, Carey's Manitoba Reports (Winnipeg, 1875; reprint ed., Calgary and New York, 1918). See also Reports of Cases Argued and Determined in the Court of Queen's Bench in Manitoba both at Law and in Equity During the Time of Chief Justice Wood, From 1875 to 1883 . . ., ed. E. D. Amour (Toronto and Edinburgh, 1884).

[135] Gibson, Substantial Justice, p. 118.

[136] Manitoba Free Press, 19 and 20 August 1875.

While Wood's behavior was frequently a sore point, his intellectual capabilities were not. The man who presided at the wood frame Winnipeg courthouse[142] built in 1874 dominated it by force of personality. His judicial decisions were polished and rational and public orations outstanding, but his impatience in court was sometimes vented on counsel or cowering witnesses.[143] None of the cases heard by him compared with his first.[144] Nevertheless, by 1878 the Court of Queen's Bench bore his stamp. He and the lawyers who appeared there were shaping its character and integrating their activities within it, defining the courts and others subsidiary to it as their social space.

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[137] The Nor'Wester, 27 September 1875.

[138] P.A.M., MG12 B1, Morris Papers, Lieutenant Governor's Collection, item #116, Mackenzie to Morris, 3 December 1875.

[139] Ibid., item #1,202, Scott to Morris, 1 February 1876.

[140] Ibid., telegram book #1, 19 and 25 February 1876.

[141] P.A.M., Executive Council Minutes, 4 January 1877.

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[142] For information on courthouses, see Randy R. Rostecki, The Early Court Houses of Manitoba, Manuscript Report Series, no. 285, (Parks Canada, 1977).

[143] Stubbs, "Hon. Edmund Burke Wood," p. 122.

[144] The Canadian Law Times 11 (1891):529.

CHAPTER IV

INTRUDERS: PUBLIC AVENUES OF INTEGRATION, 1870-78

The emergence of prominent lawyers as an integral part of the public life of Manitoba in the 1870's was a significant feature of the early political evolution of the province.[1] The process of professionalization depended upon the expanding field of opportunity which active political participation provided, while such political participation by lawyers ensured their successful integration into the community. The abrupt conferring of provincial status on Manitoba and the end of economic isolation found the community inexperienced in the operation of democratic government and with a leadership vacuum. Assuming roles as leaders, a number of ambitious and opportunely-placed lawyers soon assisted in giving expression to the dominant themes and issues of public life.

Beginning with the Lieutenant Governorship of

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[1] Useful for tracing the political events of the decade are: Frank A. Milligan, The Lieutenant-Governorship in Manitoba, 1870-1882" (M.A. thesis, University of Manitoba, 1948); R. O. MacFarlane, "Manitoba Politics and Parties After Confederation," Canadian Historical Association, Annual Report (1940):45-55; and Robert Painchaud, "Les Rapports entre les Metis at les Canadiens Francais au Manitoba, 1870-1884," The Other Natives the Metis, ed. A. S. Lussier and D. Bruce Sealey (Winnipeg, 1978).

Adams George Archibald, lawyers began to assume a large and important place in the public life of Manitoba. From the point of view of the Canadian government, the selection of the right man for the position was essential, as they wished to avoid repeating the fiasco surrounding their appointment of William McDougall in 1869. In Archibald, the Canadian government chose well, as he had the right combination of qualities of political experience and leadership style which ensured some measure of success. And as a lawyer he had already demonstrated the practical legal knowledge and administrative skills that would be necessary in his capacity as government organizer.

The son of a judge, Archibald was trained in the law and practiced it in Nova Scotia before turning to politics. As a Nova Scotian Assemblyman, he had occupied the offices of Solicitor General and Attorney General on separate occasions. A Maritime advocate of Confederation, he was a delegate to the Charlottetown (1864) and London (1866-67) Conferences. Named Secretary of State for the Provinces in the first Dominion cabinet, his political career was interrupted by electoral defeat in the federal election of November 1867. His appointment as Lieutenant Governor in 1870 meant residing in an isolated frontier community but at the same time offered the attraction of being politically useful again. Combining a tendency to exercise a paternalistic control over all aspects of government with the polished skills of a diplomat, Archibald began his tenure in uneasy circumstances.

The geographic isolation of Manitoba from the settled areas of Canada with which Archibald was familiar, was profound. Communication links by steamboat, mail, or after 1871, telegraph, were tenuous at best, and often unreliable.[2] The second outstanding aspect of the infant and perhaps immature province[3] was its factional bitterness, the residue of the Riel insurrection. As The Manitoban recorded: "The antagonism between the English and French races divided the country into two hostile camps--not only arrayed against each other but subject to the danger of collision with the hungry savages who were prowling the settlement."[4] Most of the population of 12,000 were politically inert in terms of party politics, but resentment and seething bitterness lay just below the surface, threatening law and order. Potential local leadership was wanting, as neither the aggressive Canadians surrounding John Christian Schultz nor the Métis leaders, whom the Canadians blamed for the murder of Thomas Scott, were capable of generating enough popular confidence among the francophone and anglophone mixed-blood majority, or of calmly and rationally ensuring security for all groups in the community.[5] Describing the situation, Sir John A. Macdonald had written to Archibald: "Although you are a Constitutional Sovereign . . . it is evidently necessary that, in the present state of affairs, you should be in fact a paternal despot."[6] Until the government was reorganized, his authority would be absolute and the conventions of responsible government held in abeyance until the legislation structure evolved to that stage.

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[2] Archibald complained that the mail routed through Pembina did not remain confidential. Canada, Sessional Papers, 1871, no. 20, p. 29, Archibald to the Secretary of State for the Provinces, 29 September 1870.

[3] Murray S. Donnelly, "Parliamentary Government in Manitoba," Canadian Journal of Economics and Political Science 23 (1957):22.

[4] 31 December 1870.

When he arrived at Fort Garry on the morning of 2 September, preceded nine days before by Col. Wolseley and his revenge-minded troops, questions of authority and leadership were never far removed from his thoughts. Donald Smith, who had made arrangements for Archibald's reception, welcomed him with relief. Generally, the settlement's first impression of him were favorable.[7] Sizing up the situation, Archibald soon formed impressions of what he must do. Careful not to reignite community antipathies, he reported: "I have taken much pains in endeavoring to tranquilize them." He appealed "to them to see how important it is to the prosperity of the country, that all the leading men, rrespective of party, should come forward and give me their aid in establishing a Government that can secure the peace of the country."[8]

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[5] Illustrative of the volatile state of affairs which greeted him was that the Governor was forced to hold two levees. The first one held at the Fort, 6 September 1870, was not attended by any Métis. Therefore, a second reception was held at St. Boniface.

[6] P.A.C., MG26A, Macdonald Papers, Macdonald to Archibald, p. 425, 1 November 1870.

[7] "Lieutenant-Governor Archibald's Levee," News-Letter, 13 September 1870.

Shortly afterwards, he began taking steps to organize the government, and in compliance with his instructions, Archibald chose only those individuals he thought indispensible in the process. In September 1870, two men were recruited for the Executive Council and commissioned as administrative officers. Alfred Boyd, a merchant, became Provincial Secretary, while Marc Girard, a lawyer, was named Provincial Treasurer. Indicating that his selections reflected the dual nature of Manitoba, Archibald shared his other reasons with the Secretary of State for the Provinces. Alfred Boyd, he explained, "is a man of fair abilities, of considerable means, and very popular among the English half-breeds," adding that though "highly esteemed by the English party he is not obnoxious to the French."[9] The other man, Mr. Marc Amable Girard, was a French Canadian "from Varennes below Montreal" and reputedly "a gentleman of some property, and of good standing" who "seems to be the nominee of the French party."[10] First directing Girard to the largely legal task of compiling a simplified code of the existing laws of Assiniboia, Archibald accomplished other immediately required measures by proclamation. Proclamations to respect the peace, forbidding the sale of liquor to Indians and to open the courts followed. Anticipating the need for elections, an electoral code was prepared and electoral districts, sensibly based on existing parish boundaries,[11] were announced.

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[8] Canada, Sessional Papers, 1871, no.20, p. 10, Archibald to the Secretary of State for the Provinces, 10 September 1870.

[9] Ibid., p. 16, 17 September 1870.

[10] Ibid.

The first provincial election was set for 30 December 1870 and Archibald took an active part in the campaign. Pursuing a policy of conciliation, he deliberately courted the most moderate elements among the English-speaking "old settlers" and tried to combine the moderates among the French Métis and French Canadians. Appealing to the instincts of those who longed for a return to less troubled times, Archibald was able to coalesce support for the administration in both communities in spite of the opposition provided by Dr. Schultz and his supporters, who were angry over the unresolved nature of the Thomas Scott issue. Schultz' followers constantly appealed for support under the banner of "loyalty."[12] Keeping alive the idea of resistance to Riel and joining that to criticisms of Archibald's slowness in relinquishing authority, the 'Loyalist Party' of Dr. Schultz styled themselves as "peoples' candidates." His attackers claimed that the "Governor has two irresponsible advisers, and even they are only figureheads--the real advisers being the Hudson's Bay Company, who were deeply implicated in the rebellion as the worst of the Riel party."[13] Archibald's wish to be sustained by a fair majority was realized in the election when his 'Government Party' candidates took all but five of twenty-four seats, thus defeating the 'Loyalists.' Representing continuity with their Red River experience, the new Legislative Assembly's seats were equally divided between French and English members.

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[11] Milligan, "The Establishment of Manitoba's First Provincial Government," p. 11.

[12] Schultz' newspaper was the News-Letter. The Manitoban, owned by Robert Cunningham and William Coldwell, supported the governor, while Le Métis, established by Joseph Royal, expressed the concerns of the French community.

Shortly after the election, Archibald chose a five man Executive Council to form a government ministry made up, as he explained, of the "best . . . men I could find."[14] Among those 'best' men he retained Marc Girard and added one other lawyer, Henry Joseph Hynes Clarke, as the province's first Attorney General. The federal government's Sir George Cartier had recruited them both along with Joseph Dubuc and Joseph Royal,[15] to lead the majority moderate portion of the French-speaking community. Described by one author as "a remarkably talented lot of 'carpetbaggers,'"[16] they all took a prominent and active part in public life; but none so willfully as Clarke.

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[13] From a speech made by Dr. Lynch, a 'Loyalist' supporter, reported in The Manitoban and quoted in Milligan, "The Establishment of Manitoba's First Provincial Government," p. 4.

[14] P.A.C., MG26A, Macdonald Papers, Vol. 187, Archibald to Macdonald, pp. 183-4, 16 January 1871.

[15] Useful sources on biography are a pamphlet prepared by Manitoba, Historic Resources Branch, Joseph Royal (1985) and L. A. Prud'homme, "Joseph Royal, sa vie, ses oeuvres," Memoires de la Société royale du Canada 10, 2e série, (1904-05).

In the Assembly, Clarke became recognized as government leader,[17], and while the government was sometimes referred to as Clarke's ministry, he did not function as a premier would when responsible government was finally in place. Lieutenant Governor Archibald, in fact, directed the government's activity himself, appointing individuals only after they agreed to support his personal program. Archibald handed the "Council a memo of 32 Bills which would be absolutely necessary to form the sketch of a Provincial constitution."[18] The two lawyers in the government were immediately pressed into writing the particulars of the legislation. Taking advantage of the fledgling and inexperienced nature of the first legislature, Archibald directed the legislative program as he wished, although Clarke, an aggressive proponent of responsible government, challenged him on measures to create the courts and legal profession.

Before most of the bills Archibald had prepared became legislation during the first Assembly, he chose members of the Legislative Council to reflect the variegated ethnic and religious complexion of the settlement. There were no lawyers among them.[19] In securing the passage of forty-three bills during the session, he explained, it was necessary to exercise "a pretty firm hand with friends and foes,"[20] but Archibald obtained the judicial and governing machinery he desired, resorting to his powers of reservation only four times. With a lawyer's eye for detail and quality, Archibald displayed his legal expertise and explained further why it was necessary for him to be directly involved. Archibald related that "If you had seen some of the drafts proposed for my acceptance . . . you would have felt somewhat as I did when I threw them aside, and undertook, amid the distractions of the Session, the labor of drafting them myself."[21]

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[16] Milligan, "The Establishment of Manitoba's First Provincial Government." p. 8.

[17] L. A. Prud'homme, "Le Premier Parlement de Manitoba, 1870-1874," Royal Society of Canada Transactions, sec. 1 (1923):170.

[18] P.A.C., MG26A, Macdonald Papers, Vol. 187, Archibald to Macdonald, 16 January 1871.

Archibald enhanced the power of his position as the province was organized, rewarding political allegiance with patronage appointments, although the small size of the province limited the number available. By the close of 1871, only sixteen months after arriving, Archibald immodestly reported through The Manitoban[22] that

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[19] L. A. Prud'homme, "Le Counseil Législatif de Manitoba," Royal Society of Canada Transactions, sec. 1 (1931):6.

[20] P.A.C., MG26A, Macdonald Papers, Vol. 187, Archibald to Sir George Cartier, 26 May 1871.

[21] Ibid., Archibald to Macdonald, 3 November 1871.

[22] "Manitoba, The History of a Year," 1 January 1872.

> Out of the chaos in which the arrival of the Lieutenant Governor found us order and peace have been evoked; the excitements of times of troubles have passed away. A police has been organized, an enumeration of the inhabitants made, the country has been parcelled off into electoral divisions, elections have been held, an Assembly returned and convened, a responsible Ministry constituted, a code of laws enacted, courts of justice organized and put into operation: The Indians title to half a continent released, the public domain of the province surveyed, laid off in blocks and made ready for immigration; lines of communication with Thunder Bay by the lakes, and with Duluth and St. Paul by the United States, improved; steamships for communicating with the interior in the course of construction, and railway explorations across the continent almost complete; mail routes and post offices established all over the Province, customs houses instituted and duties collected, prisons and penetentiaries built; and, last of all, a telegraph line established, making us part and parcel of the living world.

Without realizing that the Lieutenant Governor had supplied the list of accomplishments himself, Le Métis, normally supportive, sardonically replied that he "has been given credit for everything but the sunshine and the flow of the rivers."[23]

While Archibald's list of accomplishments were indeed impressive, the circumstances of his leadership were not entirely felicitous. During the spring of 1872, Marc Girard was appointed to the Senate, creating a vacancy in the Executive Council. Archibald appointed another practicing lawyer to replace Girard as Provincial Secretary. He was Joseph Royal, first Speaker of the Provincial legislature, a Superintendant of Education and publisher of Le Métis. The position in the council of Attorney General Clarke, who had become an irritating opponent of the

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[23] 11 January 1872.

Lieutenant Governor, was now challenged by a fellow lawyer and Council member equal to the task. Vying for leadership of the French-speaking Manitobans and reacting to the challenge that Royal seemed to represent, Clarke used his position to transfer the government French language printing contract to The Manitoban from Royal's paper, Le Métis.[24] Relations between the two did not improve.

Relief from the responsibilities of governing came unexpectedly to Archibald in the aftermath of his raising of a citizen volunteer army in the fall of 1871 to defend against an imminent Fenian attack. The invasion amounted to little.[25] The large and powerful Métis defence contingent led by Louis Riel was thanked publicly by Archibald, who was accused by those seeking to embarrass him and the government, of sympathizing with a rebel. Believing his position no longer tenable, Archibald tendered his resignation[26] and it was accepted several months later.

Archibald's replacement was also a lawyer, a man of broad political and legal experience, having served briefly as the first Chief Justice of the Court of Queen's Bench of Manitoba and then as a temporary administrator in

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[24] Gibson, Substantial Justice, p. 91.

[25] The invasion took place at Pembina, 5 October 1871. See D. N. Sprague, Canada and the Métis, 1869-1885 (Waterloo, Ontario, 1988), pp. 78-79; Roy P. Johnson, "The Fenian 'Invasion' of 1871." H.S.S.M. Transactions, ser. 3, no. 9 (1952-53):30-39.

[26] P.A.C., MG26A, Macdonald Papers, Archibald to Macdonald, p. 78,107, 31 December 1871.

Archibald's absence. Like his predecessor, Alexander Morris sought compromise and moderation in all of his initiatives as Lieutenant Governor. While perhaps not his intention, the introduction of responsible government is a case in point. The government regime led by Attorney General Clarke, was defeated in the spring of 1874 on a confidence vote after its support from the English-speaking voters had eroded. When the Executive Council resigned in July, Morris called upon Marc Girard to take the premiership over while Morris chose the remaining members of the cabinet. Joseph Dubuc was asked to replace Clarke as Attorney General. According to Morris' biographer, encouraging responsible government was "probably beneficial, concentrating political attention as it did on present alliances and future policies rather than on recriminations over past defeats and hostility to the federal power."[27] The fuller measure of responsible government also proved to be useful to the Lieutenant Governor in dealing with political leaders. Its introduction meant that Morris was relieved of "managing the animals composing his Ministry." Nevertheless, Manitoba's rival lawyer politicians, Clarke, Royal and Cornish, remained an annoyance to Morris, perhaps because he expected better from members of his own profession. They feuded constantly and bitterly over items that Morris viewed as paltry, and used every opportunity to reward friends and family with patronage. After the appointment of County Court Clerks by the Council, Morris remarked, "Their nepotism is enough to kill any government," for out of four appointments made, they had given "Clarkes's brother, Howard's brother and Royals' brother-in-law each one."[28]

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[27] Jean Friesen, "Morris, Alexander," Dictionary of Canadian Biography XI, p. 611.

Morris was well-placed in Manitoba to influence its development as well. When the issue of "better terms" for Manitoba focused on matters involving railways, he was an active participant in negotiations and, calling upon his legal skills, was the author of a number of submissions to the federal government. In addition to his work in the developing area of dominion-provincial relationships, Morris, a Presbyterian, displayed political acumen, acting as a go-between or broker and bringing together rather disparate religious groups on the matter of higher education. Existing Anglican, Roman Catholic and Presbyterian colleges cooperated to form the University of Manitoba, founded in 1877, partly through his intercessions. The least satisfactory aspect of his administration "lay in the failure to preserve Métis lands" in the province. His biographer viewed as "unforgivable" that he may have profited personally in dispossessed land and used his position to do so.[29] Evidence for this view is strongly suggested by his inability to capture a federal or provincial seat in Manitoba in 1878, with allegations of economic impropriety then swirling about him. Morris' public career in Manitoba ended late in 1877 with the appointment of Joseph-Edouard Cauchon as his replacement. Though called to the bar of Lower Canada in 1843, Cauchon had never practiced law and, unlike his two predecessors, was unable to bring that particular dimension of experience to the office of Lieutenant Governor.

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[28] Quoted in Ibid., P.A.C., MG26A, Macdonald Papers, Morris to Macdonald, p. 113,837, 4 October 1872.

[29] Friesen, "Morris," p. 613.

Joseph Dubuc, who began his legal career in 1870, enjoyed a long and prestigious career in the law and in public life before his death in 1914.[30] Dubuc was listed among the talented young lawyers from Lower Canada whom Bishop Taché exulted would buttress the French-speaking element in Manitoba:

> Messieurs Girard, Dubuc, Royal, Clarke nous sont venus du Canada, et, avec quelques bons éléments que nous possédions dêja, nous pouvons nous flatter d'une représentation honorable et probablement supérieure dans notre legislature locale, en sorte que pour le moment nous ne sommes pas dans une position inferieure, et pendant les quatres ans de la première session [sic] du Parliament nous pouvons obtenir des lois avantageuses.[31]

His career is illustrative of the absorption of lawyers into Manitoba politics and the concomitant advantages this afforded new lawyers who needed to be visible in order to effectively develop strategic personal associations. Other notable lawyers built substantial public careers during the province's first decade, but Dubuc was selected for attention as he was the only one to record in detail his impressions of this process.

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[30] See Diane Payment, "Le Manitoba" Province Bilingue ou Anglaise? Jcseph Dubuc at les Developpements Politiques au Manitoba, 1870-85," unpublished paper, University of Manitoba, 30 July 1973.

[31] Bishop Taché to Mgr. Grandin, 9 December 1870, in Dom Benoit, Vie de mgr. Taché, vol. 2 (Montreal, 1904), p. 159, quoted in note #17, Milligan, "The Establishment of Manitoba's First Provincial Government."

Uppermost in the mind of Alexandre Taché, Bishop of St. Boniface, as Manitoba was granted provincial status, was the concern that French elements be ably represented politically. Along with George-Étienne Cartier, the federal Minister of Justice, he believed that constitutional guarantees set out in the Confederation agreement and under the Manitoba Act required defending if the accomplishments of the Catholic mission were to be maintained and the linguistic duality of the first prairie province was to be retained. To this end, Father Joseph-Noel Ritchot, acting as Taché's agent and as a delegate for the Provisional Government in negotiations with Ottawa in 1870, approached Dubuc, then a thirty-year-old Montreal lawyer, to come to "share the struggle of the French[-speaking] Catholic population in the new province." Responding positively to the invitation to join the struggle to defend the position occupied by and privileges claimed by a steadily diminishing minority, Dubuc arrived in the Red River Settlement in June 1870. Acting partly from a sense of mission,[32] views which where reinforced by his associations with Louis Riel[33] and

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[32] McAlduff, "Joseph Dubuc," p. xxi.

[33] Dubuc had been a schoolmate of Riel at Collège de

Taché, Dubuc abandoned the province of his birth.

Born the son of a poor Lower Canadian farmer and eldest of fifteen children, Joseph Dubuc was a most unlikely candidate for a career in the law. His early schooling was disrupted by the labor needs of his father's farm and without finances to establish his own farm, at age eighteen, Dubuc travelled, like many of his contemporaries, to the factory towns of New England in search of employment and an opportunity to learn English. He found both. Returning to Quebec to attend the Christian Brother's Commercial School in Beauharnois, he attracted the attention of sympathetic clergyman who wished to see his sacerdotal potential cultivated, and saw to it that Dubuc was enrolled in the Sulpician Collège de Montréal. The "cours classique" he received opened the way to the faculty of law of McGill University in 1866, a bastion of English and Protestant Montreal. A pragmatic Conservative, a devout Roman Catholic and well-studied in the political controversies of his time, Dubuc took up his pen while a student-at-law and under a pseudonym submitted articles to newspapers, later working regularly for La Minerve. Prepared by experience for a life in either journalism or the law by the time he graduated from law school in September 1869, the move to Manitoba seemed to offer greater promise than he could forsee in Montreal. He wished to marry and settle down, and he

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Montreal for five years. In 1870 Riel requested that Dubuc come. P.A.M., MG14 B26, Dubuc Papers, Riel to Dubuc, 10 January 1870.

described his prospects in Montreal some years later:

> La difficulté de se faire une clientèle lucrative pour quelqu'un qui commencait dans les circonstances où je me trouvais m'etait connue. La profession était encombree. Je voyais des avocats de talent végéter pendant des années avant de prendre leur essor et faire leur marque. Jusqu'à la il fallait rester célibataire.[34]

Dubuc went to Red River in 1870, leaving his wife behind temporarily, a pattern repeated by a number of lawyers who followed him. At first, Dubuc resided at Fort Garry with Riel while the Provisional Government was still in power. He believed that the Métis resistance was justified, the Provisional Government legal,[35] and that the benefits achieved under the Manitoba Act were not secured improperly, but worthy of praise. But while able to understand Riel's excesses, Dubuc would not condone wrongdoing as justifiable. Legal and moral judgments aside, Dubuc was quick to recognize that the adventuresome nature of his sojourn in Red River was capable of lifting him from the ranks of professional obscurity in Quebec.[36]

Exploiting fully the potential of his situation by writing under his own signature this time, Dubuc contributed a sympathetic "insider's" view of happenings to La Minerve and other papers in Montreal throughout the summer of 1870.[37] Appalled by the excesses of Wolseley's troops, Dubuc kept Riel informed of events unfolding in Manitoba after Riel was forced to flee. Riel, confident of Dubuc's leadership abilities and willingness to express his convictions, invited him to become the new leader of the Métis: "Tu peux mener nos gens. Tu as déjà beaucoup de leur confiance, et tu peux en gagner encore."[38] Dubuc was reluctant, but he continued to attach his aspirations to the interests of Riel and the Métis as he perceived them. Initially, he held the view that the best way to preserve the French and Catholic culture of Manitoba was in protecting the interests of the Métis.

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[34] P.A.M., MG14 B26, Dubuc Papers, Autobiographie et Lettres, p. 66.

[35] Ibid., letter of protest from L. A. Prud'homme, brother-in-law of Dubuc, to the Editor of Maclean's Magazine re: Joseph Dubuc being portrayed in an article appearing 15 July 1926 as "one of the Riel Rebels."

[36] Ibid., Autiobiographie et Lettres, p. 79.

In Manitoba Dubuc turned to the familiar vehicle of journalism to accomplish his aim of defending Métis interests and ensuring Franco-Manitoban unity. Cooperating with his law partner, Joseph Royal, who was also experienced in journalism, in the creation of a weekly newspaper, Le Métis, the two lawyers launched their venture 27 May 1871.[39] Aimed at breaking down Métis isolation by emphasizing their common French patrimony with Quebec, by constantly speaking out against those with designs on Métis lands, and by urging the Métis voters to support sympathetic provincial legislature candidates, the paper was an instrument of leadership and integration. Lawyers and community were becoming one.

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[37] His work stands in contrast with Charles Mair's virulent anti-Metis materials written for the Toronto Globe.

[38] P.A.M., MG14 B26, Dubuc Papers, Riel to Dubuc, 21 October 1870.

[39] Royal acted as the first editor and was previously instrumental in forming La Revue Canadienne (1864) and Le Nouveau-Monde (1867). Le Métis survived until 29 September 1881.

Dubuc and Royal made common cause with Métis interests and were unrelenting in the call for a full amnesty for the leaders of the resistance. Both men participated in the Fenian expedition in 1871, along with Riel, in hopes that such acts of loyalty by so-called "rebels" would produce the desired forgiveness from the federal government, but they were to be disappointed. When Prime Minister Alexander Mackenzie called a Royal Commission into being in 1874, Dubuc's law partner, Royal, was summoned as a witness, but Dubuc was himself far from sanguine about the outcome.[40] The eventual granting of pardons to all Red River participants in the insurrection, excepting Riel and Lépine, confirmed his worst fears.

Dubuc's concern over French Catholic interests in Manitoba and his training in the law drew him into active political life immediately. He was chosen by Lieutenant Governor Archibald to be one of two official enumerators conducting a census and representing French and English interests preliminary to the first provincial elections in 1870. Dubuc was to become a member of the Manitoba legislature for seven years (1871-8). In the election campaign of 1870, Dubuc wrote articles in Le Métis calling for solidarity for the Government Party. He opposed the Loyalist Canadians who adamantly rejected any suggestion of amnesty for Riel and hoped to undermine the principle of French-English duality established in drawing the first electoral boundaries. On election day, 28 December 1870, Dubuc won the seat of Baie St. Paul by acclamation. Legal talent was an essential ingredient in creating viable legislation and Dubuc, though inexperienced in drafting legislation, served on numerous committees and sponsored numerous private members bills obviously originating with Archbishop Taché.[41] Taché's confidence was not misplaced as Dubuc was instrumental in securing a School Act which legally established a dual school system in the province until it was dismantled in 1890 by events over which neither man had control.

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[40] A.A.S.B., Taché Papers, Dubuc to Taché, 26 April 1874.

Treating his assigned role as leader as a sacred trust, Dubuc was very critical of professional colleagues in public life who acted irresponsibly.[42] Believing that Henry Clarke, who became Attorney General in 1872, was betraying the French and Catholic community on the altar of personal ambition after he sought the convictions of several Métis men as traitors after the Fenian fiasco and openly favored retribution against Riel and Lépine, Dubuc and Royal determined to do all they could to remove the troublesome Clarke from the Executive Council.[43] When an opportune time arose, Dubuc seconded the motion of non-confidence which ended Clarke's tenure.[44]

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[41] Dubuc sponsored private members bills for the incorporation of the Archbishop of St. Boniface, St. Boniface College and the Sisters of Charity.

[42] P.A.M., MG14 B26, Dubuc Papers, Autobiographie at Lettres, p. 77.

In the new ministry formed afterwards under Girard in 1874, Dubuc was named Attorney General, thereby becoming the most powerful law officer in the province. His position was short-lived, however, cut short by a Ministerial crisis in December 1874, when two English-speaking ministers fearing an anti-French backlash from their own constitutents felt constrained to resign. This action eroded Premier Girard's alliance of support based on pro-French factions and moderate English parishes. Continuing anglophone immigration from Ontario had produced mounting political pressures to implement electoral redistribution more in keeping with the changed demographic reality. Clarke had introduced a redistribution bill to do so. That Dubuc was expected to stand firm in defending Francophone's seats against such an onslaught is evidenced by his incoming correspondence,[45] but his own views concerning what was possible under changing circumstances was perhaps more realistic. He believed that some measure of compromise was still possible.[46] Having no choice, Dubuc and Girard proffered their resignations to Morris, who named R. A. Davis to form a new ministry. Though Davis was a personal friend and fellow Catholic, Dubuc was not in the new streamlined ministry.

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[43] Ibid., Mémoires d'un Manitobain, pp. 156-8.

[44] Ibid., p. 166.

[45] Ibid., Lachapelle to Dubuc, 25 August 1874; Desjardins to Dubuc, 31 August 1874; and L. F. R. Masson to Dubuc, 7 September 1874. For background see Robert Painchaud, "The Catholic Church and the Movement of Francophones to the Canadian Prairies, 1870-1915" (Ph.D. dissertation, University of Ottawa, 1976).

In the provincial election held early in 1875, Dubuc abandoned his largely Métis constituency of Baie St. Paul for the more prosperous St. Norbert North, which elected him by acclamation. The move symbolized his own shift away from championing Métis causes. Skilfull in debate and having earned a reputation for his grasp of parliamentary procedure, Dubuc was chosen unanimously as speaker[47] and occupied the chair until 1878. In that position he continued to urge cooperation between English and French-speaking members. His active work in private life in co-founding La Société de Colonisation, which was organized in an attempt to encourage the repatriation of French-Canadian emigrants to New England and to attract settlers from Quebec to Manitoba after 1875,[48] was indicative of his view that increased French Canadian settlement was the only way to stem their loss of influence in the province.

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[46] Ibid., Mémoires d'un Manitobain, p. 231.

[47] Ibid., p. 291.

[48] Dubuc was a Director and President while the organization attracted 15,000 people between 1875 and 1880. See Arthur I. Silver, "French Canada and the Prairie Frontier, 1870-1890," Canadian Historical Review 50 (March 1969):11-36.

Not then formally aligned with a federal political party, but mindful of French and Catholic interests, Dubuc was an active campaigner in the 1871 federal election on behalf of sympathetic Conservative candidates. In the 1872 federal election Dubuc encouraged Riel, who occasionally interrupted his exile to make surreptitious visits to his family in St. Vital and to run for office in the Provencher riding,[49] despite the objections raised by moderate Métis spokesmen like Breland, Hamelin and Bruce, who feared this would weaken their position. Attorney General Clarke also became a federal candidate for Provencher, claiming sympathy for both Métis and French Canadians.[50] Dubuc was suspicious of Clarke's motives. At one election meeting which Riel attended, Clarke, his mercurial personality showing, challenged the Métis leader to a duel.[51] The duel never took place and both men withdrew their candidatures when George Cartier, defeated in Montreal, required a safe seat and an unopposed election.

Like other lawyers, Dubuc assumed a leading role in political campaign activity, but taking sides involved risks. In the Selkirk constituency in 1872, the Canadian loyalist element tried to steal the voting register from the house of Roger Goulet, the chief polling station.[52] Canadians recently immigrated from Ontario were angered at not being allowed to vote because they had not been in the Settlement long enough to fulfill residence requirements. Dubuc was at the house representing the winner, Donald A. Smith of the Hudson's Bay Company, but was in real danger, as a short gun battle broke out between the French Métis and the Canadians. Dubuc escaped injury there, but later that night a mob broke into his Le Métis office, smashing and burning as they went.[53]

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[49] P.A.M., MG14 B26, Dubuc Papers, Dubuc to Riel, 31 January, 27 April and 9 June 1872.

[50] Ibid., 15 August 1872.

[51] Le Métis, 4 September 1872.

In the crowd was another lawyer of decidedly different political interest, Frank E. Cornish. He was aligned with Dr. John Schultz and the anti-French elements in the community and had fired up the well-liquored crowd with salvos against the Hudson's Bay Company and the Chief of Police, whom he described as a "toad-eating Communist."[54] An inspired instigator who was charismatic, crude, seasoned in the corrupt practices of local politics and a former mayor of London, Ontario, Cornish was capable of violence. An unsuccessful attempt by Chief of Police Plainval and his constables to contain the mob also ended in violence. With Cornish's guidance, the attention of the Canadian mob was, in addition to Le Métis, directed at a symbol of the old order, The Manitoban, whose offices were also sacked.[55]

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[52] P.A.M., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, pp. 75-83.

[53] Ibid., pp. 83-84.

[54] The Manitoban, 21 September 1872.

In the aftermath of the violence which required the intervention of Dominion troops to subdue it, the Court of Queen's Bench, meeting for the first time in October 1872, faced the delicate task of inquiring into whether the accused deserved to be indicted. Chosen as prosecutor, Dubuc questioned uncooperative witnesses about the guilty participants. Many feared reprisals and most were English-speaking. Dubuc unwisely named those he knew to be responsible for the violence,[56] but the "Grand Jury ignored the bills to the rioters,"[57] therefore, none of the accused rioters was indicted. Upon leaving the courthouse, Dubuc was accosted by John Ingram[58] and brutally assaulted. Dubuc sustained serious injuries.[59] Running back to the courthouse, Royal reported the incident immediately to Chief Justice Morris, but, as Morris reported, "Cornish sprung to his feet, with mischief in his eye."[60] He had been retained by John Schultz to defend rioters in the event of prosecution.[61] Morris reported to the Prime Minister later that "I reordered him [Cornish] to sit down, and requested the matter to be at once submitted to the Grand Jury." Court spectators were so pleased that they applauded Morris' firmness. While he enjoyed putting Cornish, who had "tried bullying and failed," in his place, Morris was to regret "the failure of justice in the trial of the rioters." But he was able to rationalize the apparent failure by pointing out that "it was well that the bills were not found--I had no force to enforce law."[62]

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[55] The only newspaper office left unscathed was that of The Liberal, which was sympathetic to the Canadian view.

[56] P.A.M., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, p. 87.

[57] P.A.C., MG26A, Macdonald Papers, Morris to Macdonald, p. 113,844, 12 October 1872.

[58] Le Métis, 12 October 1872. An Orangeman, Ingram was later Chief of Police for Winnipeg.

[59] P.A.M., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, pp. 88-92. He lost the sight of one eye for life.

[60] P.A.C., MG26A, Macdonald Papers, Morris to Macdonald, p. 113,852, 15 October 1872.

The death of Sir George Cartier in May 1873 left the federal seat of Provencher open and again dashed hopes of an expected amnesty for Riel. Still confident that differences between French Canadians and Métis were less important than their common purpose of French and Catholic representation, Dubuc arranged to have prominent French Canadians invite Louis Riel to run for Parliament. Campaigning vigorously on Riel's behalf and editorializing in Le Métis, Dubuc was elated with the satisfactory result. With the help of former Quebec associates, he arranged for Riel's safe arrival in Ottawa to claim the seat he had won.[63] Riel never took the seat. In the 1874 federal election, Dubuc again campaigned and wrote articles on Riel's behalf and for reliable candidates in other constituencies.[64] The effort was in vain. As Dubuc explained, Riel was expelled:

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[61] Ibid., Archibald to Macdonald, p. 78,230, 25 September 1872.

[62] Ibid., Morris to Macdonald, p. 113,852, 15 October 1872. The Prime Minister responded by congratulating Morris, writing: "Cornish is a thorough blackguard, but by adopting the course you have done, of firmness, you will put him down." (Ibid., Letterbook # 19, 24 October 1872).

> Durant le cours de la session, quelques députés d'Ontario soulevèrent la question de l'élection de Riel. Ils prétendirent que le membre élu de Provencher, étant un fugitif de la justice, sous une accusation de meurtre, ne devait jouir du privilège de siéger dans la Chambre des Communes . . . . Malgré l'opposition des députes Canadiens français, la résolution comportant l'exclusion de Riel de la Chambre des Communes, et déclarant que le siege du comte de Provencher se trouvait vacant fut adoptée.[65]

With Provencher vacant, another by-election was required. Dubuc remained convinced that Riel was the best representative for the Métis but heard conflicting voices on the issue. Riel and supporters in Montreal favored his relection,[66] but in Manitoba there was less enthusiasm for campaigning for Riel for the third time. For one, Joseph Royal had come to the view that filling the Provencher seat with an able French-Canadian member like himself was a more reasonable solution than trying to reinstate Riel with the amnesty question still unresolved.[67] Even Archbishop Taché was unenthusiastic.[68] Dubuc's painstaking attention to detail detected an ineligible voter on an opponent's nomination list, resulting in Riel's third election by acclamation,[69] but to no avail as Riel was again expelled from the House of Commons. The terms of the partial amnesty in 1875, sentencing Riel to five years of exile, abruptly ended any thought of continuing the electoral struggle on his behalf, and after the federal government granted a full pardon to all who took part in the resistance in 1869 except Riel, Lépine and O'Donoghue, advancing the Métis cause in the federal arena declined in importance for Dubuc. The out-migration of Manitoba Métis and the French Canadian immigrants now arriving in Manitoba to farm completed the refocusing of Dubuc's attention.

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[63] McAlduff, "Joseph Dubuc," pp. 67-68.

[64] P.A.M., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, pp. 133-46.

[65] Ibid., pp. 149-53A.

[66] Ibid., Riel to Dubuc, 11 August 1874; Riel to Girard, Dubuc and friends, 13 July 1874; and Lachapelle to Dubuc, 9 June and 10 August 1874.

[67] McAlduff, "Joseph Dubuc," pp. 75 and 79.

While Dubuc was not comfortable at the bar by his own admission,[70] political considerations allowed him to overcome the disinclination. When three Métis men Dubuc believed to be "simples et crédules"[71] were wrongfully accused and indicted for feloniously and unlawfully levying war against Her Majesty for their minor part in the Fenian Raid in October 1871, he agreed to defend them. Dubuc was convinced that they were being treated unfairly.[72] He was joined by Royal for the defence, and together they were faced by lawyers D. M. Walker and W. B. Thibeaudeau as counsel for the Crown. Two of Dubuc's clients were released for lack of evidence. The third man, Letendre, who was convicted of treason, was condemned to death by Judge Johnson, but through the petitioning of Dubuc and Taché the sentence was commuted to life imprisonment.

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[68] P.A.M., MG14 B26, Dubuc Papers, Taché to Dubuc, 10 May 1874.

[69] Ibid., Mémoires d'un Manitobain, pp. 176-9.

[70] Ibid, Autobiographie et Lettres, p. 163.

[71] Ibid., Mémoires d'un Manitobain, pp. 43A-43B.

While the absolute numbers were small, the scope of political opportunities for lawyers who were firstcomers to Manitoba was broad. Entry into public life flowed from patronage and the duties of appointed positions, genuine convictions of the need for responsible representation and, of course, from the attractiveness of political power. Although economic viability was vital, political activity was a most necessary component of the intruding lawyer's survival in the developing Manitoba community.

In order for lawyers to begin to occupy a legitimate and permanent place in Manitoba, it was necessary that they blend their experiences with the prevailing economic realities as well. In the midst of shedding its fur trade and nomadic features for mainly agricultural and settled economic characteristics, the period was one of transition and anticipation, as newcomers, including lawyers, expected further immigration and economic development. As the economy grew in size and complexity, the roles available to lawyers did as well.

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[72] A.A.S.B., Taché Papers, Dubuc to Taché, 4 and 17 November 1871.

Typical of the grudging recognition that lawyers might play a legitimate role in this economic development is the attitude expressed in an 1871 newspaper item announcing the arrival aboard the Selkirk of a young Winnipeg lawyer:

> Seeing that lawyers are a necessary evil and that the righting of wrongs is to a great extent in their hands, we cannot but feel the great advantage of having gentlemen like Mr. Bain, who has passed through his legal course with marked ability, and who brings with him the highest possible recommendation.[73]

The enjoyment of success in economic terms upon which permanency depended, was not, however, assured by talent or presence alone, as a contemporary observer remarked when reviewing the progress made by one of Winnipeg's first lawyers: "Mr. MacDonnell by perseverance and strict attention to his profession has built for himself the reputation of being one of our first lawyers."[74] Underscoring the notion that achieving economic viability was sometimes an uneven process, the writer continued: "We remember . . . the time when Mr. MacDonnell used to sit in his office with his feet elevated Yankee fashion on his table patiently waiting for clients to turn up. That his patience has been well-rewarded Winnipeg well knows."

In order to sustain their intrusion into the Manitoba economy, lawyers were required to respond to opportunities in an economy in a state of flux. In economic terms the region and the potential uses for its resources were undergoing significant change.[75] Locational factors and concomitant concerns over communications and transportation and the potential agricultural uses of prairie and parkland soil and climate, once drawn on to support the fur trade only, were undergoing reassessment. Glowing reports had reached Eastern Canada before Confederation and continued unabated afterwards. The determination of the Dominion to develop the newly acquired Western lands "for the purposes of the Dominion" and to encourage colonization and railway-building coincided with the arrival of newcomers mainly from Ontario. The influx increased significantly after 1878 when the Pembina Branch Railway line linked Winnipeg with railroad lines at the American border. Before 1878 federal government spending on troops, on establishing government offices and in subsidies paid to the province fueled the local economy. Businessmen supplying the import and export needs of settlers in outlying areas and the rapidly growing population of Winnipeg gave rise to wholesale and other commercial enterprises, while the city, incorporated in 1873, became a magnet for a host of specialized facilities and services, including those provided by the legal profession.

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[73] Manitoban News-Letter, 3 June 1871.

[74] Begg and Nursey, Ten Years in Winnipeg, pp. 72-73.

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[75] See Ruben Bellan, Winnipeg's First Century: An Economic History (Winnipeg, 1978), chapters 1 and 2 ; J. M. S. Careless, "The Development of the Winnipeg Business Community 1870-1890," Royal Society of Canada, Transactions, ser. 4 (1970):239-54; Irene Spry, "The Transition from a Nomadic to a Settled Economy in Western Canada, 1856-96," Royal Society of Canada, Transactions 6, ser.4, s.2 (June 1968):187-201; and Nicole J. M. St. Onge, "The Dissolution of a Metis Community: Pointe à Grouette, 1860-85," Studies in Political Economy 18 (1985):149-72.

While Dubuc's motives for taking up the practice of law in Manitoba were partially political, he, as was the case with other lawyers, could not ignore the fact that developing one's professional reputation and making a living were intimately connected. Announcing their legal practice, Dubuc and Royal placed a card regularly in Le Métis. The advertisement placement provides an indication of the kind of practice both men intended to attract. Informing potential clients of an office in both Winnipeg and St. Boniface, their card explained:

> M. M. Royal et Dubuc se chargent de faire les actes de vente, reviser les titres de propriété, les préparer pour l'enregistrement, etc., etc. Ils donneront également leur attention à toutes les affaires commerciales, collections, etc., dont on voudra les charger.
>
> M. M. Royal et Dubuc suivront les termes des Cours Inférieures et d'Appels dans les divers districts de la Province.

Building a lucrative practice based mainly on performing legal transactions was difficult for Dubuc, however, as many of his clients were Métis. In the absence of lawyers, the Métis had become accustomed to receiving legal assistance from the local clergy at no cost to themselves, and now Dubuc and other lawyers were seeking to attach monetary value to their services. Even when Dubuc and Royal successfully convinced their clients that payment of fees was a necessary feature of the lawyer-client relationship, many also felt that free services should be supplied in return for votes supplied to both Dubuc and Royal during elections.[76] In any event, when acting on their behalf, most of the cases involved petty criminal offences as quarterly reports in Le Métis (1871-1887), listing crimes, appearances, convictions and counsel clearly show. There was likely little remuneration involved in this.

No shining star at the Bar, a contemporary described Dubuc's style as "fair and honest, and never subtle or endeavoring to get an unfair advantage."[77] Fortunately for Dubuc, he had other work to occupy him. An important client was Archbishop Taché, for whom Dubuc regularly handled business and legal matters.[78] Occasionally Dubuc was paid for his translating abilities.[79] With civil litigation generally limited as well,[80] a measure of occupational diversification was for Dubuc, as was the case for most lawyers, essential. Of course, public officials like judges received a set salary but in Dubuc's case, newspaper involvement and government largesse in the form of appointments rounded out his portfolio of income-generating activities.

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[76] P.A.M., MG14 B26, Dubuc Papers, Autobiographie et Lettres, p. 88.

[77] O'Donnell, Manitoba As I Saw It, p. 61.

[78] A.A.S.B., Taché Papers contain many examples.

[79] P.A.M., Executive Council Minutes, 5 August 1872 indicates that Dubuc charged $160 to translate statutes into French.

[80] Ibid., GR541, Court of Queen's Bench, Appearance Books, Winnipeg, Civil & Criminal Appellate show that the greatest number of cases for all reasons up to 1878 occurred in 1875 with 377. In 1878 there were 347 cases listed and out of those, 56 involved trials.

In 1873 Dubuc was appointed land commissioner by the federal government and in 1874 the provincial government was his employer, as he explains: "D. M. Walker et J. Dubuc furent nommés conseillers de la couronne. Ils étaient aussi chargés d'aviser le gouvernement dans les questions légales qui pourraient surgir."[81] Additional work came to him when Alexander Morris became Lieutenant Governor of Manitoba and The North West Territories, when Dubuc was appointed legal advisor to the Council of the Territory, a post he held until 1876. Joining the local economy in the capacity of a legal professional in a permanent way was more difficult for those who did not hold a significant public office.[82]

Nevertheless, even in Dubuc's circumstances, he was already sufficiently confident of his financial position in Manitoba by 1872 to share in financing the construction of a residential duplex in St. Boniface. Dubuc and his wife, who joined him that year from Montreal, shared the building with A. A. C. LaRivière and his wife for the next two years before the Dubucs built their own substantial though unpretentious home. While Dubuc's early experiences in penetrating the local economy were not repeated in the same way by all lawyers enjoying a measure of prominence by 1878, they do demonstrate the typical range of possibilities that were available.

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[81] Ibid., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, p. 234.

[82] In 1872 provincial government ministers were receiving $2,000 annually, "Notre Condition Politique," Le Métis, 11 January 1872.

The most enduring economic theme during the 1870's in Manitoba centered around the many unresolved questions concerning the claiming and disposition of real estate.[83] Certainly, issues surrounding the security of landholdings had been central to the resistance on the part of the Métis in 1869-70. It was a situation which naturally beckoned lawyers since both questions of law and potential profits were involved, yet in a larger cultural and political sense, land ownership afforded with it a measure of control over the future direction of the province. The resolution of land matters did not satisfy all concerned, but the elaboration of land-related concerns allowed the intrusion of legally trained men as rights in land were defended, legislated, conspicuously exploited or promoted by them.

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[83] See Gerhard Ens, "Metis Lands in Manitoba," Manitoba History 5 (Spring 1983):2-11; Douglas Kemp, "Land Grants Under the Manitoba Act," H.S.S.M. Transactions ser.3, no.9 (1954):33-52; N. O. Côté, "Grants to Half-Breeds of the Province of Manitoba and the North-West Territories, Comprising the Provinces of Saskatchewan and Alberta in Extinguishment of the Indian Title, 1870-1925," Department of the Interior (Ottawa, 1929); Edwin Pridham, "The Title to Land in Manitoba," H.S.S.M. Transactions ser.3, no.13 (1958):7-26; P. R. Mailhot and D. N. Sprague, "Persistent Settlers: The Disperal and Resettlement of the Red River Métis, 1870-1885," Canadian Ethnic Studies 17, no.2 (1985):1-30; D. N. Sprague, "Government Lawlessness in the Administration of Manitoba Land Claims, 1870-1887," Manitoba Law Journal 10, no.4 (1980):415-41; Ibid., "The Manitoba Land Question 1870-1882," Journal of Canadian Studies 15, no. 3 (1980):74-84; and John L. Taylor, "Historical Introduction to Métis Claims in Canada," Indian Claims Commission (Ottawa, 1975). In Canada and the Métis, 1869-1885 (Waterloo, 1988), Doug Sprague fully elaborates his thesis that the Manitoba Metis were dispossessed of their rightful inheritance. Sprague's interpretation is challenged by Gerhard Ens in "Dispossiession or Adaptation? Migration and Persistence of the Red River Metis, 1835-1890," paper presented at the Canadian Historical Association meeting, Windsor, Ontario, June 1988.

An unpublished and uncompleted manuscript begun by Dubuc as part of his memoirs entitled "Les Titres de Terrains,"[84] underlines the importance he personally attached to the problems of determining land title in early Manitoba. Not unlike other lawyers who figured prominently in legal questions of the era, Dubuc was thoroughly familiar with land claims and land grants. River lot land, mainly situated along the Red and Assiniboine Rivers and settled before 1870 and claimed afterwards, consisted of lands officially granted by lease from the Hudson's Bay Company and recorded in a land register, lands continuously occupied with rights traditionally confirmed by possession, and lands where occupancy amounted to intermittent squatting and, therefore, with rights more difficult to determine. Land which fell into the latter category normally had few substantial buildings erected on it, very little land under cultivation and was principally home to a French-speaking, seasonally itinerant population of buffalo hunters, tripmen,[85] carters and traders.

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[84] P.A.M., MG14 B26, Dubuc Papers.

[85] Tripmen and tripping were the vernacular terms in

Attempts to ensure security of tenure in the land provisions of the Manitoba Act [86] were less satisfactory than intended by the Red River delegates. Following the transfer, little could be done about confirming titles to land until surveys were completed in 1873. Among those applying for patents afterwards were members of the Métis community who had not already joined the exodus from Red River because the economic vagaries of the buffalo hunt made residence in the settlement no longer viable, and because the poisoned atmosphere of relations between arrogantly superior newcomers from Ontario and French Catholic Métis dictated avoidance. Those claiming land with the fewest improvements often faced Dominion officials who refused to accept seasonally unoccupied and poorly constructed dwellings and discontinuously cultivated gardens and crops as meeting the criteria of section 32 of the Manitoba Act. Obtaining freehold claim to a river lot became increasingly difficult as surveyors of the federal Department of the Interior rigidly interpreted the regulations regarding satisfactory improvements necessary to qualify. Subsequent amendments to the Manitoba Act strengthened their hand in this.[87] No appeals to the courts were possible and large

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Rupert's Land for boat laborers and boat labor engaged by the Hudson's Bay Company and private contractors.

[86] Statutes of Canada, 33 Victoria, chapter 3 (1870). The relevant sections are 30, 31 and 32.

[87] See Sprague, "Government Lawlessness," Appendix B: Statutory Alterations to the Manitoba Act, pp. 435-36.

numbers of claimants were denied patent.[88] The whole affair was an invitation to exploitation if not corruption.

Also subject to considerable confusion during the decade were claims on ancillary lands adjacent to river lot claims which were customarily used for hay, pasture or timber cutting. Anticipating the imminent transfer of territory to the Canadian government, many newcomers and Métis, concerned over more clearly identifying lands they hoped to claim, had "staked" claims by driving pegs in the ground around unoccupied river frontage, creating more legal uncertainty. Conflicting claims created by this anxious speculative activity heightened tensions and defied simple solutions.

More problematic still was the issue of the Métis land grant made under the provisions of the Manitoba Act. The grant dealt with aboriginal right extinguishment and rights associated with claims occupancy. Seeking to ensure security of land tenure, the act stipulated that a grant of 1,400,000 acres was to be selected from ungranted lands by the Lieutenant Governor in "such parts of the Province as he may deem expedient" for "the benefit of the families of the half-breed heads of families residing in The Province at the time of the said transfer to Canada." Delays in determining the location of these reserved lands, the stipulation that children could not legally divest their inheritance before becoming adults, and the unlikelihood of children taking up land without their parents, combined to inspire legal and administrative irregularities which simply allowed speculators to "wreak havoc."[89] The law entitled children to take up land in allotted reserves but few did so, with most of the land eventually being acquired by speculators in questionable transactions with the complicity of the Manitoba courts.[90] In 1874, legislation[91] was passed which provided a similar land grant benefit to the "heads" of mixed-blood families. Adults received $160 scrip certificates redeemable for the purchase of surveyed and ungranted dominion lands. Speculators, lawyers among them, promptly purchased the scrip, holding it in anticipation of higher prices. Land claims and grants provided an important avenue of integration for lawyers, offering them both the opportunity to assist in solving land questions and to gain personally.

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[88] Ibid., p. 440.

In keeping with his concern for the French-speaking portion of the population, Dubuc manifested from the outset a protective concern over lands thought to be guaranteed under the provisions of the Manitoba Act. During the first sitting of the legislature of Manitoba, he lost no time in pressing for the naming of a committee to investigate the matter.[92] Mindful of the anxiety among those who wished to have their river lot claims recognized in some official way but who were worried because the square survey system was being implemented, Dubuc actively supported legislation in 1870 which legalized extant river lots indicated on Hudson's Bay Company maps. Even before the first legislature was called into being, Dubuc was chosen as one of two enumerators to conduct a census which had the dual purpose of supplying adequate information required to satisfy the effective distribution of the 'half-breed' grant and establishing electoral districts. Delays were in part caused by reported census figures which omitted precise numbers and identification of heads of families and their children. As the government's regulations for the surveying and distribution of settled lands became known in 1871, Dubuc and Royal explained them to their readers in Le Métis, adding their own cautious editorial embellishments, and called parish meetings to form committees designed to effectively lay claims to blocks of land where ownership was expected to be in question.[93]

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[89] The phrase belongs to Gerald Friesen, The Canadian Prairies, p. 197.

[90] P.A.M., GR174, Box 19, Report of Commission of Inquiry into Administration of Justice as to Infant Lands and Estates, 20 December 1881.

[91] An Act Respecting the Appropriation of Certain Dominion Lands in Manitoba, Statutes of Canada, 26 May 1874, 37 Victoria, c.20, 26 May 1874.

The question of land grants set aside for the "children of the half-breeds" concerned Dubuc even more because delays in surveying prevented its implementation, while incoming settlers mainly from Ontario were being allowed to take up land before the surveys were complete.[94] Moreover, some of the land the newcomers were settling on was land which Dubuc's political constituents regarded as their own by prior occupation. Lieutenant Governor Archibald advised Dubuc that, to indicate ownership, signs could be erected on the land or notices printed in Le Métis, but his advice and his personal assurances that fairness was the uppermost consideration of his administration did not comfort Dubuc.[95] By the following summer an undifferentiated census figure was available indicating a mixed-blood population of 10,000 souls, thus Archibald reluctantly began to reserve "scrip" lands.[96] Three lawyers, Dubuc, Royal and Girard, worked diligently in Catholic parishes to identify acceptable locations for reserve lands.

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[92] L. A. Prud'homme, "Sir Joseph Dubuc," Revue Canadienne (June 1914):506.

[93] 27 May and 8 June 1871.

It had long been customary in Assiniboia for settlers in old Red River to claim the exclusive right to cut hay on the strip of land two miles beyond their river lot, known as the "hay privilege." The economic rhythms of agriculture depended on its preservation.[97] Therefore, the boldly preemptive homestead entries of newcomers on these lands forced a reaction. Speaking for the French parishes, Dubuc drew up petitions demanding an early resolution of the problem,[98] although the problem was common to English parishes too. Acting on the findings of a board of inquiry consisting of J. S. Dennis, the Surveyor-General, and puisne judges McKeagney and Bétournay, that such claims were legitimate, a recommendation was struck that a commission be appointed to individually adjudicate the claims' merits.[99] Two lawyers, John Bain and Dubuc, one English and one French, were named in the fall of 1873 to hear evidence, with a view to compensating claimants in scrip payments. Working through the winter, the commissioners received the not unwelcome stipend of $20 per day[100] and must have been tempted to drag out the proceedings although they refrained from doing so. Aside from petitioning the federal parliament the following winter on behalf of the French Canadians and Métis who were worried over changed regulations with respect to the recognition of "staked claims," Dubuc was not actively engaged in the land question again until after 1878. In 1881, as Justice of the Court of Queen's Bench in Manitoba, Dubuc presided over a two-man commission with Judge Miller to adjudicate claims still outstanding.

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[94] P.A.M., Riel Papers, no.98, Dubuc to Riel, 14 June 1871.

[95] Ibid., no.95, Dubuc to Riel, 18 June 1871.

[96] Ibid., MG12 A1, Archibald Papers, Letterbook F, Archibald to the Secretary of State, 27 July and 26 August, 1872.

[97] See Barry Kaye, "The Settlers' Grand Difficulty: Haying in the Economy of the Red River Settlement," Prairie Forum 9, no.1 (1984):1-11.

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[98] P.A.M., MG12 B1, Morris Papers, Lieutenant Governor's Collection, no.60, Dubuc to Morris, 13 January 1873.

[99] McAlduff, "Joseph Dubuc," pp. 143-4.

[100] Ibid., p. 146.

For most lawyers, however, self-interest rather than the defence of other's interests, would appear to have been a more compelling motive for dealing in land matters. Two excellent studies of the impact of dominion and provincial land legislation on land dealings are instructive. Douglas Sprague's study of federal legislation concludes that the federal Department of Justice was far from disinterested in administration of the Manitoba Act and its impact on land distribution, and operated what amounted to a "secret bureaucratic process" designed to undermine Métis land guarantees set out in the Manitoba Act by constant amendment, with the result that "the Metis people were swamped by a tide of new settlers."[101] Sprague's study lays the blame squarely at the feet of the Dominion government. Using a similar approach to Sprague's, but concentrating on provincial legislation, is a study conducted by Gerhard Ens.[102] He emphasizes that the provincial government did not have responsibility for establishing policy for the administering of lands intended for the Métis population, but argues that provincial legislators failed to provide adequate safeguards in legislation and the courts to "protect the Metis from losing their lands once these were granted."[103] Although legislation was generally protective until 1878, beginning in 1877, infant land sales transactions resulting in alienation increased significantly.[104]

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[101] "The Manitoba Land Question," p. 77. Sprague's contention is challenged by Thomas Flanagan, Riel and the Rebellion 1885 Reconsidered (Saskatoon, 1983), p. 26.

[102] "Metis Lands in Manitoba."

[103] Ibid., p. 3.

Lawyers Marc Girard and Joseph Royal, functioning as legislators, played a signal role in introducing and subsequently defending the benevolent intent of the 'Half-breed Land Protection Act' of 1873. Chief Justice Wood and Frank A. Cornish advanced the view that the only significant impact of the legislation was to make speculators more cautious, and to force Métis vendors of land to receive less for their lands.[105] In any event, it was evident that lawyers were taking sides on the issue. By 1878, however, a political reordering of the voting coalition in the legislature that had fairly successfully staved off the waning of Métis political power, meant that Métis land rights would be much harder to defend.[106] In 1878 provincial legislation reflected this, but even before that one of the province's leading lawyers, Chief Justice Wood, was implicated by his actions in the process of dispossessing the real estate of Métis infants.

By that time, grants to Métis children in the form of 'scrip' had been made by the federal government, and pressure to find a legal mechanism to facilitate their sale to speculators was enormous. The less than scrupulous business was a continuation of the general purchasing of other Métis land claims which had become so routine that going prices were advertised in newspapers. Acting under his authority as Chief Justice to promulgate Court rules and procedures Wood, in 1875, established conditions for bringing petitions for sale before the court when 'infants' were involved. On the surface, the rules appeared to contain adequate safeguards against abuse. In 1878 Wood applied virtually the same rules established in 1875 to a bill he authored, which became legislation and finally the Infant Lands Act. Though the courts were empowered to reject land sales petitions to protect the innocent, the court presided over by Chief Justice Wood, whose example set the tone for the puisne judges, seldom did. After 1878, thousands of transfers were approved by the courts as regulations were "consistently ignored by the legal profession and the court."[107] Acting on their own behalf or as agents for purchasers, lawyers presented these petitions, especially in Wood's court, between 1875 and 1878, and with increasing frequency thereafter. "These petitions," claims Ens, "contained almost no information as to the circumstances of the infant or estate," appeared "on almost identical printed forms" and usually had "no information about the necessity of money for support of the infant in the order . . . but only bold statements that the sale was expedient."[108]

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[104] See Sprague, "Government Lawlessness," Appendix C, Statistical Tables, Table 1, Patents and Alienations of Children's Allotments, p. 437.

[105] Cornish wanted to abolish the 1873 Act.

[106] Friesen, "Homeland to Hinterland," passim, is the best discussion of the erosion of the French-Canadian Metis and Old Settler coalition.

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[107] Ens, Metis Lands in Manitoba," p. 8.

The most notable individual involved in such transactions, among the prominent in the legal profession, was Arthur Wellington Ross.[109] First visiting Manitoba on holidays in 1872, he returned two years later, invested heavily in land and soon gave up an administrative career in the public schools of Ontario for the more lucrative opportunities afforded in law and land speculation in Manitoba. By 1878 he had been called to the bar in Manitoba and was in partnership with his brother W. H. Ross.[110] In securing appropriate signatures from the frequently illiterate Métis families who were signing over control of land they had not often seen, Ross employed an experienced scrip buyer, Napolean Bonneau, to act as translator and R. P. Wood, Chief Justice Wood's eighteen year old grandson to negotiate the purchases. Although subsequent retroactive legislation to legalize the earlier orders implied recognition of the basic illegality of much of this activity, few at the time questioned the rapaciousness which surrounded the dispossession of huge tracts of land set aside for Métis children.[111] Puisne judge Joseph Dubuc, disturbed by such abuses called for a public inquiry that might end the sordid business.[112] Another prominent lawyer heavily involved in the purchasing of child allotments, Heber Archibald, when giving testimony before a Commission of Inquiry into the Administration of Justice as to Infant Lands and Estates in 1881, pointed out that "it was the opinion of nine out of ten members of the profession that it was an improvident grant to the Half Breeds--in the first place--that it would bring them more harm than good--and that the sooner the whole of these lands was settled the better."[113] When Chief Justice Wood's part in all of this came under scrutiny in the proceedings, E. M. Wood, his son, tried defending his father's actions, much to the consternation of T. B. Robertson, counsel for the Crown.[114]

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[108] Ibid., p. 7. Sometimes the orders were simply handled in bunch lots.

[109] See G. M. Adam, ed., Prominent Men of Canada (Toronto, 1892), pp. 242-6.

[110] He was admited to the Bar by a special act of the legislature, 2 February 1878. Statutes of Manitoba, 41 Victoria, chapter 38 (1878).

Since the centers of commerce for the province were not yet determined, the politics of land was central to much that occurred in the realm of urban growth during the decade also. In Winnipeg, land speculators controlling land outside the Hudson's Bay reserve lands vied with the Company over the site of the 'downtown' core, and used every opportunity to discredit the Company.[115] During 1872-73, the incorporation movement constantly impugned the Company for opposing the incorporation of Winnipeg for financial reasons, but according to one author, the "Company was probably the area's most non-vocal exponent of the measure."[116] A leader in the movement for incorporation was lawyer F. E. Cornish, the city's first mayor, a man not unaccustomed to the rambunctious tone (in the elections held 5 January 1874 there were more votes cast than there were registered voters) of local politics. He was at the center of efforts to enhance the value of land by providing a tax base for civic developments which was only possible once incorporation was accomplished. Other lawyers holding positions of public trust found ways to use the economic opportunities afforded by land to personal advantage. A case in point was Lieutenant Governor Morris. A former commercial lawyer, he purchased land in the Winnipeg area, and later used part of it to build the Morris Block,[117] while investing heavily throughout the province in land and in land companies.

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[111] Ens, "Metis Lands in Manitoba," pp. 8-9.

[112] P.A.M., MG14 B26, Dubuc Papers, Dubuc to Elie Tassé, 25 November 1880.

[113] P.A.M., GR174, Nov 19, Testimony, 23 November 1881. Commissioners were Frederick McKenzie and Thomas A. Bernier, both lawyers.

[114] Ibid., Report, 20 December 1881.

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[115] Randy R. Rostecki, "Winnipeg Land Politics in the 1870's," The Beaver (Spring 1985):42-43.

[116] Ibid., p. 45. This view stands in sharp contrast with Alan Artibise, Winnipeg A Social History of Urban Growth 1874-1914 (Montreal, 1975), chapter 1, who argues that the Hudson"s Bay Company opposed incorporation in order to avoid taxation on undeveloped land.

[117] Jean Friesen, "Morris, Alexander," p. 613. His successor's investment interests were similar, see R. R. Rostecki, "The Early History of the Cauchon Block, Later the Empire Hotel," Manitoba Pageant 21 (Spring 1976):10-17.

Associated with Morris during the years before his departure in 1878 was J. A. N. Provencher,[118] a Montreal lawyer and journalist. The nephew of Bishop Provencher of St. Boniface, he was associated with Joseph Royal in founding La Revue canadienne and in 1869 was appointed secretary to William McDougall, would-be lieutenant governor of the North-West Territories. Provencher was thus familiar with the West and its economic potential. Subsequently appointed immigration commissioner in Manitoba in 1871, he was to encourage francophones from as far away as France to settle in Manitoba. In 1873 he was named Commissioner of Indian Affairs in Manitoba. In that capacity he received a salary of $2,000 annually and was mainly responsible for distributing the goods which Indians had bargained for in the treaties. But his salary was supplemented in other ways. To purchase the goods required to meet treaty obligations, monies were forwarded to a Winnipeg bank and Provencher "could draw checks on them as he pleased."[119] Such poor accounting procedures were ended after an exceedingly critical auditor's report was submitted to his superiors in Ottawa. By 1877 Provencher's administrative incompetence was joined to allegations of corruption in letting government contracts. The concerns were serious enough to warrant an investigation by the federal government.

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[118] Titley, "J. A. N. Provencher."

[119] Ibid., p. 16.

Winnipeg lawyer W. H. Ross, brother of A. W. Ross, was appointed to head a commission of investigation. Two locally prominent French-Canadian lawyers, Attorney General Joseph Royal and Joseph Dubuc, speaker of the legislative assembly, defended Provencher before the inquiry. According to Provencher's biographer, Royal's motives were not altruistic, but he became involved because he too "was implicated personally in the shady business dealings of the hapless Indian superintendent."[120] His back up against the wall, Provencher fought back with all the chicanery and obstructionist skill his knowledge of legal practices could muster. Nonetheless, the commissioners were able to conclude the inquiry by 13 March 1878. Their report was damning. Fraudulent tenders with the local hardware company of McMicken and Taylor and faulty bookkeeping with large sums unaccounted for were uncovered. Provencher's friend Royal, for example, received far more for a herd of cattle in 1876 than they were worth. A peremptory dismissal from office followed the inquiry, which went largely unnoticed in Manitoba or the Dominion. Provencher stayed on in Manitoba in law partnership with Michael Carey, but a hugely unsuccessful bid for election to the provincial legislature in 1879 precipitated his departure from the West by 1880.

Although they are by no means exhaustive, the illustrations above serve to demonstrate both the range and the effective limitations of the lawyer's pecuniary world of the 1870's. Much of the economic life of Manitoba was lived in anticipation of greater things and was, therefore, fueled by a speculative motor. Supplying some of the legal mechanisms for that motor, lawyers joined enthusiastically in speculation in land. After 1878, the economic infrastructure of Manitoba included a new and important element of development, a rail link to the outside. For all concerned, including lawyers, the change symbolized the beginning of a new era.

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[120] Ibid., p. 26.

While the total number of lawyers who had resided in Manitoba by early in 1878 numbered just over forty,[121] many of these firstcomers had succeeded in assuming prominent and strategic placements. Forming a professional body late in 1877, lending character to the courts which were their theatre, providing leadership and breathing partisanship into local politics and exploring the parameters of expectant capitalism, their combined impact was disproportionate to their number. By 1878 lawyers had intruded into Manitoba life by employing professional means, defining and occupying legal 'space,' influencing political life and sometimes ensuring permanence by procuring satisfactory incomes. In successfully intruding into Manitoba's developing community, prominent lawyers during the seventies had paved the way for the meaningful integration of the legal profession in the decade which followed.

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[121] Henry J. Morgan, ed., The Canadian Legal Directory (1878), pp. 183-4 and The Manitoba Directory (1878-79), p. 223.

CHAPTER V

FIRSTCOMERS: THE STRUCTURE AND IDEOLOGY OF PROMINENCE, 1870-78

As we have seen, the broad process of professionalization of law begun in Manitoba before 1878 involved an increasingly meaningful and varied participation by lawyers in their social environment. Recognizing the avenues of penetration available to them, the most successful lawyers in early Manitoba were achieving a degree of community acceptance, or perhaps acquiescence, which had escaped Red River's first lawyers. Following the dramatic events of 1869-70 and the fundamental and changing patterns of growth afterwards, the arrival of 'these legal gentlemen' was received with generally quiet resignation on the part of the public. During the 1870's lawyers, who ranged from notable to egregious, were, for the first time, beginning to form a distinct and relatively permanent grouping within Manitoba society. As an aggregate group there was much that separated them; as individuals, their collective presence combined experiences and attitudes in such a way that the characteristics of a professional identity are revealed when career patterns are examined in total.[1]

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[1] Biographical information in this thesis was

TABLE 5.1

Twenty-five ‘Firstcomers’

Adams George Archibald
Heber Archibald
John Farquhar Bain
Louis Bétournay
Samuel Clarke Biggs
Sedley Blanchard
Daniel Carey
Félix Chenier
Francis I. Clarke
Henry Joseph Clarke
Francis Evans Cornish
Joseph Dubuc
Marc Girard
Rice M. Howard
Richard T. Huggard
James C. McKeagney
Frederick McKenzie
Alexander Morris
John O’Reilly
J. A. N. Provencher
Arthur Wellington Ross
Joseph Royal
Joseph Ryan
David Marr Walker
Edmund Burke Wood

While they did not perhaps form a legal elite in the strictest sense in which that term is normally understood, as firstcomers their influence shaped certain features of

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compiled form the following sources: G. M. Adam, ed., *Prominent Men of Canada* (Toronto, 1892); George Bryce, *A History of Manitoba, Its Resources and People* (Toronto, 1906); *Cyclopaedia of Canadian Biography* (Toronto, 1986-88); J. R. Johnson, ed., *The Canadian Directory of Parliament 1867-1967* (Ottawa, 1968); *Manitoba, Pictorial and Biographical* (Winnipeg, 1913), 2 volumes; Walter McRae, ed., *Pioneers and Prominent People of Manitoba* (Winnipeg, 1925); Henry J. Morgan, ed., *The Canadian Men and Women of Our Time* (Toronto, 1898, 1912); A. G. Morice, ed., *Dictionnaire historique de Canadiens et Métis francais de l’Ouest* (Quebec, 1912); *Newspaper Reference Book of Canada, Sketches of Representative Canadian Men* (Toronto, 1903); C. W. Parker, ed., *Who’s Who and Why A Biographical Dictionary of Notable Men and Women of Western Canada* (Vancouver, 1911, 1912); *Pioneers and Early Citizens of Manitoba: A Dictionary of Manitoba Biography From the Earliest Times to 1920* (Winnipeg, 1971); *Representative Men of Manitoba* (Winnipeg, 1902); John Palmerston Robertson, ed., *A Political Manual of the Province of Manitoba and the Northwest Territories* (Winnipeg, 1887); F. H. Schofield, *The Story of Manitoba* (Winnipeg, 1913), Volumes 2 & 3; and *The Dictionary of Canadian Biography*. Also useful were the Archives of Western Canadian Legal History, Biography Files and the Manitoba Legislative Library, Biography Scrapbooks.

Manitoba's earliest legal style in the seventies, setting it apart from the period before and after. By early 1878 it is possible to identify twenty-five lawyers, if the first two Lieutenant Governors are included, who had or were figuring prominently in Manitoba's legal life and who manifested characteristics of prominence as set out in the introduction. Accomplishing a high degree of visibility in a relatively small population was easier to achieve for the first lawyers than for later arrivals and helps explain why such a large percentage of the total number of lawyers were figuring prominently.[2] Lacking until 1877 the formal associational structure which the formation of a permanent law society ultimately provided and an organizational base to press for the common interests of lawyers, throughout much of the 1870's cohesiveness in the profession, even among its leaders, was underdeveloped. Nevertheless, the outlines of a developing occupational structure among the most prominent members of the profession is at least dimly discernible.

Some idea of the basic structure of professional prominence in the 1870's is revealed by examining the basis of the prominent lawyer's presence in Manitoba. When motives for immigrating become the focus of the historian's interest, 'push' and 'pull' factors normally can be used to summarize a full range of motives.[3] While the precise motives behind individual decisions to proceed to Manitoba cannot be examined in detail, the biographical data that is available reveals a variety of factors to support their coming, most often isolating the factors pulling them to the new province. Those lawyers whose motives are most easily identified came on the strength of political and judicial appointments. Adams George Archibald, an already prominent lawyer-politician from Nova Scotia, came as Lieutenant Governor in 1870, while Sedley Blanchard, a fellow Nova Scotian, arrived shortly after to serve as private secretary to Archibald and as clerk of the Executive Council. J. A. N. Provencher, on the other hand, arrived with Archibald's hapless predecessor, William McDougall, to serve first as his secretary and in 1871 as a federal immigration commissioner. Alexander Morris and Edmund Burke Wood were appointees to the chief justiceship of the Court of Queen's Bench, while James McKeagney and Louis Bétournay were drawn to Manitoba by appointments as puisné judges. Active recruitment by Bishop Taché and George Cartier of lawyers from Quebec to provide leadership for a Western French

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[2] In his study of the business elite of frontier Calgary, Paul Voisey found that the timing of arrival was a significant factor in determining their subsequent rise to prominence. See "In Search of Wealth and Status: An Economic and Social Study of Entrepreneurs in Early Calgary," Frontier Calgary Town, City, and Region 1875-1914, ed. Anthony W. Rasporich and Henry C. Klassen (Calgary, 1975), p. 228.

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[3] See C. M. Studness, "Economic Opportunity and the Westward Migration of Canadians During the Late Nineteenth Century," Canadian Journal of Economics and Political Science 30 (1964):570-84; James J. Talman, "Migration from Ontario to Manitoba in 1871," Ontario History, 43 (1951):35-41.

Catholic element attracted Henry Joseph Clarke, Joseph Dubuc, Marc Girard and Joseph Royal.

In at least three instances, accompanying the Red River Expeditionary force in 1870 was in some way responsible for the decision to take up residence in Manitoba. Of the men in this group, Felix Chenier and Francis I. Clarke were both young and virtually without previous experience in legal practice, while David M. Walker had practiced at Simcoe, Ontario for a number of years. Another young man who experienced his first taste of the West with the Wolseley force in 1870 and returned to Manitoba in 1882 to figure prominently in legal practice was Hugh John Macdonald, the Prime Minister's son. A student-at-law when he enlisted for service, Macdonald recorded impressions of the experience in correspondence to a friend from his school days. Following his return and writing from Ottawa, thoughts of a future in Manitoba were obviously very much on his mind as he wrote, "I don't know what my next movement will be, whether I will return to Fort Garry, go in for Law, or business."[4] That other young men were thinking the same way after their experience seems apparent.

For four lawyers with no previous legal experience, the opportunity to practice law was identified as primarily instrumental in their decision to try their fortunes in Manitoba. One of these, Richard T. Huggard, arrived with the intention of joining another lawyer, D. M. Walker,[5] in practice, while John O'Reilly joined his father's firm. Arthur Wellington Ross found business opportunities in land acquisition so attractive on his first visit that he returned to the province mainly for that reason. Francis E. Cornish needed an escape from a situation which had become untenable, according to John A. Macdonald, who wrote to Lieutenant Governor Alexander Morris to share what he knew of Cornish's circumstances: "You ask me why Cornish left London. I believe he left there because he had lost his practise and his wife had left him, having gone off with another man or something of that kind."[6] The variety of reasons suggested for lawyers coming to Manitoba demonstrates a recruitment pattern of some complexity. Stated reasons for migrating, of course, indicate only the immediate causes of the subject's move, but most often fail to capture the prevailing tone of insecurity in the society or region left behind that bred a quest for greater security realized by emigrating to a new set of circumstances.[7] For example, by mid-century the numbers of educated men in Canada was reaching saturation levels[8] and in Lower Canada a young lawyer named Gonzalve Doutre was leading an active campaign to control the profession's growth.[9]

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[4] Hugh John Macdonald to James H. Coyne, 7 November 1870, quoted in Hugh A. Stevenson, "The Prime Minister's Son Goes West," The Beaver (Winter 1963):41.

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[5] See Philip C. Locke, "His Honor Judge Walker," Manitoba Bar News 13 (April 1941):85-87.

[6] P.A.C., MG26A, Macdonald Papers, Letterbook 19, 24 October 1872. In Winnipeg, Cornish offended some of the more respectable elements in society by living with a woman who was not his wife. She may have been the one named in his will. His first wife was left nothing, his property going to "beloved Mary . . . from Philadelphia." The will of 2 November 1878 is located in the P.A.M. and quoted in Ruth Swan Rannie, "Frank Cornish--The Man," Manitoba History (Spring 1985):30.

[7] The quest for greater security amidst the instability of the times is explored quantitatively in Michael B.

Examination of several aspects of the social origins of members of the profession reveals a differentiated though predictable grouping forming before 1878. Including Lieutenant Governors Archibald and Morris, there were twenty-five lawyers in Manitoba before 1878 who either were or would achieve a measure of prominence in their careers. Ten came from Quebec; the majority from Montreal. Twelve came from Ontario, with no urban centre dominating as a point of origin: they came from Brantford, Hamilton, Kingston, London, Perth and Toronto. Three lawyers came from more distant Nova Scotia, but in each case political appointments were involved. The three lawyers who were born outside the provinces of Canada, Henry J. Clarke, Richard T. Huggard and James McKeagney, were all born in Ireland.

More helpful in illustrating the dimensions of cultural and social origin are the first languages spoken,

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Katz, "The Entrepreneurial Class in a Canadian City: The Mid-Nineteenth Century," Journal of Social History 8 (1975):1-29 and is an important theme of David Gagan, Hopeful Travellers Families, Land, and Social Change in Mid-Victorian Peel County, Canada West (Toronto, 1981).

[8] G. Blaine Baker, "Legal Education in Upper Canada 1785-1889: The Law Society as Educator," Essays in the History of Canadian Law, II, ed. David H. Flaherty (Toronto, 1983), p. 49.

[9] Léon Lortie, "The Early Teaching of Law in French Canada," The Dalhousie Law Journal 11 (1976):530.

the paternal ethnic origins and the religious denominations of Manitoba's first lawyers. A survey of the paternal ethnic origins of the cohort indicates Irish parentage as highest, equally divided between five Irish Catholics and five Irish Protestants, followed by six with French Canadian fathers. The remaining lawyers' fathers were four Englishmen, three Scotsmen and one United Empire Loyalist. The disproportionately large number of Irishmen in the grouping, even though the Irish had often to overcome the branding of inferior ethnicity in British North America, may suggest that the law was a preferred route for achieving status elevation. However, no matter how humble the origins of the aspiring law student, recognition by the Law Society of Upper Canada normally carried with it the designation 'gentleman.'[10] The same status was accorded in Quebec. Only six lawyers, all from Quebec, were francophones, although anglophone lawyers setting out from Quebec were certainly not unfamiliar with the language and were normally capable of using it. As in the case of Judge McKeagney, linguistic skills were occasionally claimed mistakenly or fraudulently and, therefore, offer only a partial view of linguistic identification or competence. In the case of religious affiliation, three denominations were dominant. Not surprisingly, Roman Catholics made up just under half of the group under investigation, with eleven. Efforts to prevent the growing French Catholic-English Protestant imbalance and to satisfy the various interests demanding consideration in federal political appointments help to explain this heavy concentration. The next largest representation was Anglican, followed by Presbyterians, with six and three respectively, indicating association with long established conservative church bodies in central Canada. It appears that most of the leading lawyers continued attending the local churches of denominational preference in Manitoba, but the more permanent configurations of active participation in church affairs is more readily apparent after 1878 than before.

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[10] Baker, "Legal Education in Upper Canada," p. 56.

Comparing the generational differences between fathers and sons by occupations is frequently used to measure various aspects of social mobility.[11] Among those subjects whose father's occupation can be traced, Lieutenant Governor Alexander Morris stands apart as having elite family membership, as his father, William Morris,[12] was a wealthy Perth merchant and influential politician, once holding appointments to the Executive and Legislative Councils of the Province of Canada. For the remaining thirteen lawyers whose father's occupational circumstances can be determined, their fathers were rarely so influential.

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[11] For example, see T. W. Acheson, "Changing Origins of the Canadian Industrial Elite, 1880-1910," Business History Review 47 (1973):189-216; David Smith and Lorne Tepperman, "Changes in the Canadian Business and Legal Elites, 1870-1970," Canadian Review of Anthropology and Sociology 2 (May 1974):97-109.

[12] Dictionary of Canadian Biography VIII, s.v. "Morris, William," by H. J. Bridgman.

The largest number, six, had fathers who were listed as farmers, although no differentiation beyond this in terms of the nature of the farms held was attempted. Joseph Dubuc, Marc Girard, J. A. N. Provencher and Joseph Royal grew up in the rural parish society of Quebec near Montreal, whose classical colleges and pulsating commercial activity drew them into its orbit, while David M. Walker and E. B. Wood, separated by an age difference of nearly twenty years, both knew the rural character of Canada's southern peninsula near Lake Erie. Three lawyers were from families headed by professionals,[13] all medical practitioners, and indicate childhood experiences spent in or near the widely separated urban centres of Montreal, Cornwall and London. The remaining lawyers' father's occupations were divided between a clergyman, a civil servant, and a retired army officer. Only one lawyer, John O'Reilly, was repeating his father's choice of profession. It is fair to conclude that inter-generation occupational mobility was maintained and more often improved upon through a legal career pursued in Manitoba.

It would be difficult to escape the conclusion that the existing educational structures available for carrying out legal education in Manitoba before 1878 were as yet formless, and where they existed at all were mostly derivative of the experiences lawyers themselves had known prior to coming to Manitoba. Before their formal legal educations began, at least sixteen men had attended college or university, their choices usually indicating both regional and denominational considerations. Only two men had studied outside of Canada.

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[13] They were Rice M. Howard, Heber Archibald and Francis E. Cornish.

TABLE 5.2

UNIVERSITIES AND COLLEGES ATTENDED BY FIRSTCOMERS

NAME	UNIVERSITY OR COLLEGE
Adams G. Archibald	
Heber Archibald	Bishop's College, Lennoxville
John F. Bain	Queen's, Kingston
Louis Bétournay	Collège de Montreal
Samuel C. Biggs	Victoria College, Cobourg
Sedley Blanchard	Dalhousie College, Halifax
Daniel Carey	
Félix Chenier	Collège St. Therese
Francis Clarke	Collège St. Mary's, Montreal
Henry Clarke	
Francis Cornish	
Joseph Dubuc	Collège de Montreal
Marc Girard	Collège de St. Hyacinthe
Rice M. Howard	
Richard T. Huggard	
James C. McKeagney	
Frederick McKenzie	
Alexander Morris	University of Glasgow & Queen's, Kingston
John O'Reilly	Trinity College, Toronto
J. Provencher	Seminaire de Nicolet
Arthur W. Ross	University College, Toronto
Joseph Royal	Collège St. Mary's. Montreal
Joseph Ryan	
David M. Walker	University College, Toronto
E. B. Wood	Oberlin College, Ohio

The rules of the first Bar Society established in Manitoba in 1872 had required the serving of apprenticeships by law students. The system for accreditation was very fluid and among the prominent of the profession, who began their Manitoba careers in this period, there were only two instances where the designation student-at-law might apply. Lawyer John O'Reilly was reported to have arrived in Winnipeg in 1874, read law in his father's office, and the following year appears to have been admitted to the Law Society,[14] which would suggest that he had begun articling elsewhere. Evidence indicates that the first student entering into articles of clerkship in Manitoba was the son of Chief Justice Wood, E. M. Wood, although he was not eligible for a call to the bar until 1879 when his five year apprenticeship was ended.[15] With the exception of A. W. Ross, who was accepted into the profession on the basis of a provincial legislative enactment early in 1878, the remaining leading lawyers received their legal education outside Manitoba and were deemed acceptable based on their calls to the bars of Ontario, Quebec or Nova Scotia. Ten prominent lawyers had been called to the bar of Upper Canada or Ontario, ten to the bar of Lower Canada or Quebec and three to the bar of Nova Scotia. As a means for imparting a particular set of social attitudes and values, legal education systems, both in their formal and informal aspects, gave rise to a "form of social intelligence,"[16] writes G. Blaine Baker, which informed the ways that lawyers used the law and shaped legal structures in society. Until 1878, the two largest groups of influential lawyers in Manitoba had received their formative legal socialization experiences under the auspices of two relatively distinct sets of circumstances, as their law training took place under the Law Societies of Upper Canada and Lower Canada.[17]

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[14] Henry J. Morgan, ed., The Canadian Legal Directory: A Guide to the Bar and Bench of the Dominion of Canada (Toronto, 1878), p. 184.

[15] Gibson, Substantial Justice, p. 128. When the younger Wood was a law student, his father applied for him to be made a notary public, but was turned down by the Council, who argued that he must be a member of the Bar. Wood then wrote an acerbic letter to Lieutenant Governor Alexander Morris (P.A.M., MG12 B1, Lieutenant Governor Collection, item # 1156), arguing his son's case.

At this time in Upper Canada, supervising the educative process was the exclusive prerogative of the Law Society and all legal apprentices serving five years study came under its authority to set admission standards and to establish a balanced curriculum of liberal and legal studies. The degree to which the Society monopolized the educative process made Upper Canada distinctive, for sharing law training with universities was not inaugurated until 1889.[18] Consistently rigorous standards were maintained through the ebbs and flows of social and economic change, though an oversupply of lawyers after Confederation encouraged some discontinuity. The Benchers of the Law Society of Upper Canada were from the outset cognizant that the purpose of legal education was to reinforce and reproduce a legal elite sharing "similar views and modes of thinking,"[19] as Archdeacon John Strachan expressed it when Osgoode Hall was being constructed. Yet merit was not sacrificed in admitting students to this unique combination of social engineering and pedagogy.

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[16] "Legal Education in Upper Canada," p. 49.

[17] To gain a greater appreciation of the personalities in the legal community of Ontario, see W. R. Riddell, The Legal Profession in Upper Canada in its Early Periods (Toronto, 1916) and The Bar and the Courts of the Provinces of Upper Canada Ontario (Toronto, 1928). For Quebec, see J. E. Roy, L'ancien Barreau au Canada (Montreal, 1897) and Histoire du notariat Canada (Lévis, Quebec, 1899-1902) and A. Vachon, Histoire du notariat canadien 1621-1960 (Quebec, 1962). On legal education in Nova Scotia, see John Willis, A History of Dalhousie Law School (Toronto, 1979).

[18] Baker, "Legal Education in Upper Canada," pp. 50-51.

Apprenticeship was the universal backdrop[20] for legal training in Lower Canada as well, although the formal structures of legal education had followed a significantly different evolutionary course than the stable, consistent and controlled pattern of Upper Canada. Only after 1840 did the Lawyer's Library and Law Institute of Montreal begin formal law teaching, followed by the Faculty of Arts of McGill College in 1847 and Laval's Faculty of Law in 1854. In 1849 the Bar of Lower Canada was incorporated, but its jurisdiction in examining educational qualifications was decentralized and shared between Quebec, Montreal and Trois Rivieres. Prior to its formation, panels of eminent lawyers and judges had granted commissions to lawyers to practice.

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[19] Strachan to Lieutenant Governor Sir Peregrine Maitland, 10 March 1826, quoted in G. Blaine Baker, "The Juvenile Advocate Society 1821-1826: Self Proclaimed Schoolroom for Upper Canada's Governing Class," Canadian Historical Association, Historical Papers (1985):82.

[20] See William R. Teatero, "John A. Macdonald Learns--Articling with George Mackenzie," Historic Kingston 27 (1979):92-112; J. E. Farewell, K.C. "The Student at Law in the Early Sixties," The Canadian Law Times 35 (1915):52-61.

Far less continuity marked the evolution of legal education in Lower Canada, where the idiosyncracies of law were further emphasized by the Code civil du Bas-Canada.

Lawyers mainly from central Canada with somewhat different legal education experiences carried with them to the developing west the attitudes of 'legal colonizers,'[21] the concrete results of which were reflected in the way they organized their professional activities in early Manitoba, expecially after the permanent Law Society of Manitoba was organized in 1877. Law students and practising attorneys gave every indication that they intended to follow patterns familiar to them in central Canada. Reflecting this dichotomy in the law was the debate over whether Ontario or Quebec laws and procedures would dominate in Manitoba. In 1877 a Law Students Society resembling the Society at Osgoode, was formed, consisting of "members of the bar, students-at-law and articled clerks,"[22] meeting biweekly to begin with in the offices of Walker & Biggs. Debate topics included legal and non-legal subjects as diverse as the causes of the Turko-Russian War, the abolition of capital punishment, the Statute of Frauds and "that Sitting Bull's presence is inconsistent with British interests."[23] Hon. Chief Justice Wood, who served as president of the Law Students Society,[24] and had already acceded to a request by the Law Society to deliver lectures on law to the students, gave two courses of lectures by year end.[25]

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[21] In a slightly different vein, the notion of colonization by legal agents in the West is the subject of R. C. Macleod, "Canadianizing the West: The North-West Mounted Police as Agents of the National Policy, 1873-1905," Essays of Western History, ed. Lewis H. Thomas (Edmonton, 1976).

[22] Manitoba Free Press, 16 October 1877.

Studies of professional men practicing in the nineteenth century reveal that various factors in their social life were as important as formal regulations and controls in structuring professional lifestyles.[26] Little is known of the social life of Manitoba's first prominent lawyers but an investigation of marital and family status does shed some light. Lawyers holding important public offices such as Lieutenant Governors Archibald and Morris or Chief Justice Wood were all married for many years before arriving and were generally devoted to their family's interests. Among the remaining twenty-one lawyers, only seven were married when they first arrived in the province. Louis Bétournay and James McKeagney, puisné judges aged 47 and 50 respectively on arrival, would be expected to be more established in their households, although McKeagney, once widowed, had married again. The remaining five lawyers ranged in age from thirty-one to thirty-eight. Practising law or journalism or the two in combination, or teaching and administering schools, these five lawyers enjoyed circumstances sufficiently remunerative to consider marrying and establishing households. Another contingent of seven individuals, all but one under thirty[27] when they came to Manitoba, arrived unmarried but returned to the East and married before 1878, bringing their brides to live with them in the new province. In addition to making adequate financial provision for their wives, the rapid pace of urban growth in the province created a housing shortage. The bachelor lawyer's world of the 1870's most certainly included hotels and rooming houses, often shared, and the company of other bachelors in similar circumstances. Unfortunately little is known of this period of the conviviality that no doubt accompanied their boarding arrangements, although Ignatious and Francis Clarke were brothers and Samuel Biggs was the nephew of the Chief Justice[28] and might, therefore, have enjoyed the advantages of support from relatives.

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[23] Ibid., 12 December 1877.

[24] Begg and Nursey, Ten Years in Winnipeg, p. 168.

[25] A.W.C.L.H., A2793, Law Society Minutes, 7 September 1877. The entry reads:

> "The lecture committee reported that the Chief Justice had again consented to give another course of lectures for the benefit of the Society. The report was approved of by the Society and Students Members of the Society were directed to attend the Lectures."

[26] For example, see William R. Johnson, "Education and Professional Life Styles: Law and Medicine in the Nineteenth Century," History of Education Quarterly (Summer 1974):185-207.

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[27] The exception was Marc Girard who was a bachelor until age fifty-six when he married a widow.

[28] Biggs appeared often before his uncle. In June 1876 he defended three Americans charged with murder for their part in the Cypress Hills Massacre three years earlier. A skilled counsel, Biggs won an acquittal much to the consternation of his uncle, the Chief Justice, and the prosecutor, Francis Cornish. See Robert S. Allen, "A Witness to Murder: The Cypress Hills Massacre and the Conflict of Attitudes Towards the Native People of the

For other prominent and flamboyant lawyers like Francis E. Cornish and Henry Joseph Clarke, escaping unstable marriages was part of the reason for coming to Manitoba and partly explains the scandalous affairs they conducted in Winnipeg while living with other women. Marriage and family would normally be expected to be a stablizing factor for the professional man, creating a somewhat different atmosphere of social expectations for him than for his bachelor colleagues. Professional advancement, concerns over status, and the burdens of providing well for one's family, however, in time proved too much for some to bear. Unquestionably a man of great intellect and rare judicial ability, Chief Justice Wood, for one, gained a reputation for opportunism in blatantly advancing the interests of his own children, while his efforts to maintain a luxurious style of life--his home in Winnipeg was palatial by local standards--ruined him financially. His well-publicized intemperance appears to have had as much to do with concerns over his household as with the difficulties of carrying out the duties imposed by his office. Despite his improvident shortcomings, his family was intensely loyal to him.[29]

Canadian West During the 1870's," As Long as the Sun Shines and the Water Flows, ed. Ian Getty and Antoine Lussier (Vancouver, 1983), pp. 239-42.

[29] P.A.C., MG26A, Macdonald Papers, Jane Wood (Mrs. E. B.) to Macdonald, October 1882.

Also contributing to the overall structure of legal prominence before 1878 was the scope and sequence of occupational experiences of individual lawyers. The frequent use of hyphenated designations such as lawyer-politician or lawyer-businessmen in describing mid-nineteenth century practitioners suggests that combining law with another activity was common.[30] Among the five senior appointees during this period, whose ages ranged from forty-six to sixty-six when arriving in the province, the range of previous occupational experiences was the greatest, nevertheless even for the remaining members of the cohort, there was considerable occupational variation. Among the two lieutenant governors and the three senior judges of the Queen's Bench, one had worked as a teacher and another for a merchant in Montreal before they had engaged in law practice. Three had been elected members of legislative assemblies, with the same number serving in cabinet postings. On the federal level, four had been Members of Parliament and two had held cabinet portfolios. In local government, one had served as an alderman in Montreal. All five had received the honorific Q.C. designation by the time they arrived in Manitoba, but only one, E. B. Wood, had ever been elected a bencher of a law society outside of Manitoba.

For the remaining members of the profession who were mostly younger, the pattern which emerges is somewhat different. Only one had been a teacher, two had been civil servants, none were employed in business, but no less than five young men from Quebec, mainly products of classical colleges, had considerable experience as journalists. Significantly, only eleven had engaged in law practice as full-fledged lawyers before coming to Manitoba, electing to continue apprenticeships or begin a new venture once they arrived. Only one appears to have experienced the affliction of wanderlust. Henry J. Clarke, a well-established Montreal criminal lawyer, was drawn by the gold rush of California in 1858, working on the newspaper Alta California in San Francisco before moving on to San Miguel (El Salvador) and acquiring Latin American artifacts and a facility with the Spanish language along the way. As politicians, these younger lawyers were nearly bereft of electoral experience, for only J. A. N. Provencher had been elected a Member of Parliament, while Marc Girard and Francis Cornish had been elected to civic governments in Montreal and London respectively, before arriving in Manitoba. Reflecting their relative average youthfulness only two possessed Q.C.'s.

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[30] See J. K. Johnson, "John A. Macdonald," The Pre-Confederation Premiers, ed. J. M. S. Careless (Toronto, 1985), pp. 195-245.

By 1878, however, their political involvement was notable. Eight had been elected as members of the provincial assembly at least once, three of them serving as the contemporary equivalents of cabinet ministers and two as premier. Four were elected to the federal parliament often holding that office simultaneously with provincial seats, and Marc Girard was appointed in 1871 to the Senate. Francis Cornish was mayor of Winnipeg. Those not participating directly in the political process enjoyed a variety of patronage benefits and other forms of government largesse. For example, Felix Chenier was Registrar of Deeds and notary public, Joseph Dubuc was a federal land commissioner, David M. Walker was the solicitor for the City of Winnipeg (1875-78) and Arthur Wellington Ross was solicitor for the Mackenzie administration in Winnipeg. While it is evident that some lawyers favored particular pursuits, a degree of omnicompetence combined with developing broadly-based strategic associations was the best guarantee of success.

By social origins, by prior experience carried to a new setting and by exploring a wide range of activities in Manitoba, lawyers had given shape to structural qualities of legal practice by 1878. However, that structure was still inconstant as the structural parameters of legal practice were about to be redefined under the conditions of a formal professional governing body and by the economic enthusiasms of the approaching second decade of Manitoba's existence. Many of 'these legal gentleman' were to enjoy the advantages which accrue to firstcomers, and to rise to prominence. Their persistence[31] in Manitoba suggests that the barriers which had prevented lawyers from becoming accepted fixtures in society before 1870 were being rapidly removed. Of the cohort of twenty-five prominent men in the 1870's there were several whose careers in Manitoba were interrupted, but most stayed on. The two lieutenant governors were gone by 1878, puisné judges Bétournay and McKeagney both died in 1879, while Chief Justice Wood died in 1882 after a stormy and sad denouement to his career. Frank E. Cornish died in 1878 at the age of forty-eight of stomach cancer. Unsuccessful in his bid for a seat in the provincial election in 1879, J. A. N. Provencher left shortly afterward, returning to Quebec journalism.

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[31] While no formal statistical meaning is attached to the use of the word, the author recognizes the importance of the concept as a device for measuring economic elites. See David G. Burley, "Making the Self-Made Man: Business and Social Mobility in Mid-Nineteenth-Century Brantford,

The structural consequence for Manitoba of this permanent legal presence was that lawyers had gained a concrete foothold through which to diffuse the attitudes of a professional ideology. But while ideas about the nature of professional practice and the nuances of behavior that were expected were internalized by individuals and derivative of their previous experiences, Manitoba's lawyers had only begun in 1878 to play a role in building the institutional supports which would adequately house their conceptual claims to a peculiar status in Manitoba society.[32]

Ontario," unpublished paper presented to the Annual Conference of the Canadian Historical Association, Winnipeg, Manitoba, June 1986, p. 19.

[32] See Robert W. Gordon, "'The Ideal and the Actual in Law': Fantasies and Practices of New York City Lawyers, 1870-1910," The New High Priests, ed. Gawalt for a first-rate discussion of the tension and struggle experienced by lawyers in living up to their ideals of service and reform

Historians examining the emergence, growth and development of the legal profession in the English-speaking common law world in the nineteenth century have emphasized that the broad process of professionalization was not value free, and furthermore, was in fact both a process and an ideology at the same time.[33] They stress that it is through examining the ideas and activities of leading members of the profession that the dimensions of a developing ideology are revealed since the most influential members of the profession were both advocates for and examples of occupational ideals, and dominated the major professional associations and institutions of legal life which gave expression to their ideas. That this would be true for Manitoba as well seems likely, but for the period before 1878 it is difficult to identify a prevailing set of professional ideals which contemporary prominent lawyers would have found recognizable. When the dimensions of a professional ideological conceptualization can be discerned it is possible to outline more clearly the occupational ideal which drove lawyers, the image of themselves to which they aspired, their attitude towards their chosen profession, the manner in which 'learnedness' was maintained, how membership criterion were arrived at, how advancement in the profession was determined

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while at the same time attaining the wealth and status they desired.

[33] Auerbach, Unequal Justice, p. 11; Daniel Duman, "The Creation and Diffusion of a Professional Ideology in Nineteenth Century England," The Sociological Review n.s., 27 (1979):passim.

and the nature of socialization and discipline of members.[34]

As the professionalization of legal practice in Manitoba entered another a stage in its development, more of these reflections of how lawyers thought about themselves become apparent. A second wave of newcomers arrived and joined the ranks of those prominent lawyers beginning their careers before 1878, altering both the structural and ideational character of legal prominence. Blending into the developing Manitoba society, the legal profession was becoming a viable and distinctive entity whose members' combined presence represented the unique distillation of individual experiences. For those members who enjoyed a prominent place in the profession, those characteristics which set them apart were the raw material defining both the structure and ideology of success.

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[34] Daniel Duman, The Judicial Bench in England, 1727-1875 The Reshaping of a Professional Elite (London, 1982), p. 178 uses a similar checklist.

CHAPTER VI

"IT IS EVERY ONE FOR HIMSELF," PROFESSIONAL BROKERS: PROMINENT MANITOBA LAWYERS, 1878-88

By 1878 the integration of the legal profession in Manitoba was well underway, underlined by the formation of an autonomous, self-governing society late the previous year. Although it already occupied a permanent place on Manitoba's social landscape, the legal profession, nevertheless, remained a rudimentary association of individuals with uneven qualifications and talent, varying degrees of competence and uncertain social standing. The differences which separated them previously became more apparent between 1878 and 1888 as the ranks of the profession first swelled and subsequently lapsed into steady, though unspectacular growth.[1] For many in the second large wave of newcomers to arrive in Manitoba, attaining or holding on to a position of influence and prominence among their peers would be as demanding as it was essential for their careers. Among those Manitoba lawyers who successfully moved to the front ranks of their profession were individuals who proved to be adept at using the mechanisms of advancement available to them in the professional and public networks of contact and association which defined their world. The process of separating lawyers who had exceptional leadership qualities, who displayed model behavior or who were simply ambitious, from men whose abilities were merely ordinary, remained a constant theme of professional life in nineteenth century Canada,[2] but in Manitoba after 1878 it was unusually marked in the face of rapid growth in the profession and the quickening pace of community development generally.

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[1] See Appendix 1 for the number of lawyers entering the profession each year. Information compiled from the two official copies of the Barristers and Attorneys rolls held by the P.A.M. and the Law Society of Manitoba.

For lawyers, the changes which occurred during the next decade placed a premium on their ability to adapt. Immigration, dominated by a British-Ontarian majority, irreversibly altered the ethnic, linguistic and religious composition of the population, and upset political balances in its wake. Politically, a ministerial crisis in 1879,[3] precipitated by rifts in the so-called French party late in the 1870's, was preceded as well by a general abandonment of a leadership role among the francophone Métis by French Canadian lawyers Dubuc, Girard and especially Joseph Royal. The shift reflected the recognition that "Manitoba had ceased to be a metis community,"[4] and paved the way for the

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[2] An exceptional study of a lawyer's rise to prominence during this era is Peter B. Waite, The Man From Halifax: Sir John Thompson, Prime Minister (Toronto, 1985).

[3] The event is analyzed in Friesen, "Homeland to Hinterland, pp. 33-47.

[4] Friesen, The Canadian Prairies, p. 201.

Norquay era (1879-1887); a period dominated by the problems of economic development. In economic terms, an atmosphere of protracted uncertainty encouraged by an international depression ended as prosperity returned after 1878. Vacant rural lands in Manitoba filled up, establishing settlement patterns far different from those once defined by river lots,[5] as railway connections and small towns now facilitated the movement of people and goods. The ability of Winnipeg's commercial elite to attract the CPR transcontinental mainline to their city and to dominate the service and wholesale requirements of the province and much of the remaining prairie West emphasized the metropolitan aspirations of the city's early citizens.[6] Within the city of Winnipeg one consequence of economic maturation was the emergence during the decade of a class-based spatial pattern of segregated residential occupancy which saw many professionals, including lawyers, living in south Winnipeg for the first time.[7] In smaller urban centres subsidiary to Winnipeg, similar concentrations of lawyers were simply not possible.

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[5] William L. Morton, "Agriculture in the Red River Colony," Canadian Historical Review 30 (December 1949):305-21. See also John Warkentin, "Manitoba Settlement Patterns," H.S.S.M., Transactions, ser. 3, no. 16 (1961): ; John Friesen, "Expansion and Settlement in Manitoba, 1870-1890," H.S.S.M. Transactions, ser. 3, no. 20 (1963-64):35-47; Ken H. Norrie, "The Rate of Settlement of the Canadian Prairies, 1870-1911," Journal of Economic History 35 (June 1975):410-27; James Richtik, "The Policy Framework for Settling the Canadian West, 1870-1880," Agricultural History 49 (1975):613-28; T. R. Weir, "Settlement in Southwest Manitoba, 1872 to 1891: Some Implications for Settlement Theory," Prairie Forum 10, no. 1 (1985):83-103.

[6] R. C. Bellan, "Rails Across the Red--Selkirk or Winnipeg," H.S.S.M. Transactions, ser. 3, no. 17 (1960-61):69-77; Donald Kerr, "Wholesale Trade on the Canadian Plains in the Late Nineteenth Century: Winnipeg and its Competition," The Settlement of the West, ed. Howard Palmer (Calgary 1977); Careless, "Development of the Winnipeg Business Community," pp. 239-54; Charles W. Anderson, "Grain: Pioneer Merchants Established Winnipeg as a Major Canadian Commercial Centre," The Beaver (Fall 1986):33-42.

For lawyers contemplating a career in Manitoba, there was no shortage of advice concerning one's possible emigration prospects. For example, in 1881 the Canada Law Journal editors advised their readers that,

> So far as we are able to judge even Winnipeg appears to possess at the present moment as many lawyers as she requires. Many of them, as we are informed, have been enticed away from the worship of their stern Mistress Themis, by the allurements of the god Plutus, and have found thereby a short road to wealth.[8]

Sounding a more hopeful note for those actually wishing to practice law there, they concluded that "those who are willing to scorn delights and live laborious days, and who will keep clear of speculation, will find it far easier to build up a practise there than in Ontario." In 1882 the same journal announced to readers that "probably Winnipeg has more lawyers to the square acre than any other place on the face of the earth."[9] Then in the midst of a real estate boom, the city of Winnipeg was the site of a bonanza for lawyers in both conveyancing and land speculation. But as with most booms, Winnipeg's boom came to an abrupt and spectacular halt. Heady years of real estate promotion and every kind of boosting[10] activity marked a high point in Manitoba's attractiveness as a destination for lawyers. Discomfiture caused by the economic downturn defeated or discouraged many, but in the legal profession were a group of leading lawyers whose legal careers continued to flourish with only minor setbacks in the saner but depressed economic climate which prevailed during the remainder of the decade. They became the professional 'charter group' of lawyers in the province and were its most effective brokers.

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[7] Randolph R. Rostecki, "The Growth of Winnipeg, 1870-1886," (M.A. thesis, University of Manitoba, 1980), p. 5.

[8] Canada Law Journal 17 (October 1881):375.

[9] Ibid., 18 (June 1882):235.

Lawyers in Manitoba, whether as practicing attorneys, judges, politicians or business associates, acted as brokers performing transactions on several levels. When lawyers are referred to as brokers or 'agents,' this is normally understood as a function of the special intrinsic powers of their occupation. In the minutiae that was the substance of their work, they were agents or brokers offering legal advice and skill, but in a larger sense as well, their intercourse in the Manitoban community involved many transactions in which the unique form of social power they possessed set them apart in organized forms of social action not exclusively legal in nature. Actions performed in different spheres of activity produced a pattern of 'brokerage' for each lawyer. Moreover, a particular pattern of brokerage was also the means by which prominent lawyers found an avenue to success.

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[10] See Alan Artibise, "Boosterism and the Development of Prairie Cities, 1871-1913," Town and City, ed. Alan Artibise (Regina, 1981).

Perhaps it was with this realization in mind that Colin Campbell,[11] then an earnest young lawyer in Port Perry, Ontario, wrote to his future wife in 1881:

> Since entering into partnership business has been very good and consequently I have not been idle nor is there much room for idleness when you consider the four duties upon me social political professional and literary and in all I am kept quite busy.[12]

The following year, Campbell journeyed to Winnipeg and began a long and distinguished legal and political career in Manitoba, culminating with the portfolio of attorney general in the Rodmondi Roblin cabinet and with his being a close confidant of the premier.[13] In performing his business, social, political, professional and literary 'duties,' Colin Campbell proved to be a most effective broker, advancing his career with notable success. From the outset, Campbell's intention was clear. He informed his sweetheart and future wife, Minnie,

> I am going to go to Manitoba the reasons for this change are many chiefly the opportunities of advancement two-fold more than here where everything is settled and it takes a long time to make that progress which ambitious

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[11] To date, Campbell's career has not received a serious scholarly examination.

[12] P.A.M., MG14C6, Minnie Campbell Papers, Box # 1, Colin to Minnie, 1 March 1881. The awkward cadence of Campbell's writing is caused by failing to separate new ideas with necessary punctuation. Nonetheless, I have included longer quotations as he wrote them since their style reveals much about the man.

[13] See W. Leland Clark, "My Dear Campbell," Manitoba Pageant (Winter 1976):2-11.

young men are ambitious for.[14]

For ambitious men like Campbell, the chance to occupy a position of influence was obviously appealing.

The most prominent lawyers, in the context of their associations and actions, became an indispensable component of the provincial legal landscape and, at the same time, distanced themselves from their colleagues with less ability to translate their role as go-betweens into a more conspicuous or lucrative personal presence. In the opening decade of their permanent status as a profession in Manitoba, the door was open for lawyers to, as one American historian observed concerning frontier lawyers, act "as gatekeepers in a fast-growing, ill-organized society."[15] A significant number of Manitoba's new lawyers took full advantage of the opportunities afforded them, although the specifics of their professional career patterns varied.

The least public of a lawyer's brokering activities occurred within the context of the legal profession itself. Ordinarily, the views of prominent legal men about this private side of their profession were something they shared among themselves but rarely with laymen. Fortunately, Colin Campbell was an exception, although he committed in his own mind no professional indiscretion in doing so, for he was baring his soul to his fiancé and wife. He did so in a refreshing and remarkably candid fashion which offers an insightful glimpse into the importance which lawyers like Campbell attached to many of their daily social transactions.

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[14] P.A.M., MG14C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 8 December 1881.

[15] Calhoun, Professional Lives, p.4.

Prominence in the profession was intimately tied to a lawyer's network of associations with other lawyers. Perhaps the most vital for young men not blessed with extraordinary familial connections at the outset of their careers was the sympathetic encouragement of a patron or influential friend. Several years before Colin Campbell emigrated to Manitoba, Alfred Hoskin, a prominent Toronto lawyer with whom Campbell articled, interceded on behalf of his student with an Ontario acquaintance, writing: "McGillvary tells me he is going to leave you and that you will want some one in his place. We have a student in our office named Campbell whom I can confidently recommend to you."[16] A positive assessment from Hoskin describing Colin as "a clever young fellow" was enough to lead to a placement and later an offer of partnership in Point Perry, Ontario. Campbell was able to repay Hoskin the favor two decades later by making a place in his own Winnipeg firm for Hoskin's son.[17]

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[16] P.A.M., MG14 B21, Colin Campbell Papers, Box #1, Alfred Hoskin to John Billings, [illegible] May 1879. Their legal business cards for Port Perry indicate that Billings and Campbell were in partnership.

[17] P.A.M., RG3 A1, Attorney General Papers, Colin Campbell, Letterbook #3, Private, p. 447, Campbell to Alfred Hoskin, 16 September 1903 and p. 463, 18 September 1903.

Again in 1881, as Campbell was making preparations to depart for Manitoba, the value of his Ontario associations was demonstrated, as was the importance of giving and repaying favors. Campbell and J. A. M. Aikins[18] had an important association as students, having worked together in the same judge's office. Campbell described what happened. "When he [Aikins] was preparing for his final examinations he had considerable work to do for his father Senator Aikins and he could not do both."[19] Tracing his "very good luck" to his own response, Campbell explained that "happily I did it for him [Aikins] and since then we have been firm friends and he has always done what he could for me." Aikins proved to be a most useful ally, arranging for Campbell to be placed in charge of "five other barristers" and to be the "confidential manager of Aikins, Culver and Hamilton"[20] of Winnipeg. Nevertheless, Campbell was not so confident of his success in Manitoba that he was willing to cavalierly close out his Ontario partnership or fail to arrange "with the Law Society that my standing as an Ontario barrister will remain unimpaired"[21] should he choose to return.

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[18] For biography, see Cameron Harvey, "Some Benchers and Secretaries," The Law Society of Manitoba 1877-1977 (Winnipeg, 1977), pp. 224-27 and David R. M. Jackson, "Sir James A. M. Aikins (1851-1929) Lieutenant Governor of Manitoba," unpublished paper prepared for Historic Resources Branch, Manitoba, August, 1980.

[19] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 26 December 1881.

[20] Ibid.

[21] Ibid.

Bolstered by hope and supported by Minnie, Colin set out for Winnipeg early in 1882. She wrote: "I know you love your profession and time will only tell the heights Sir Colin will attain in it."[22] Several months after he began work for Aikins, Culver and Hamilton in Winnipeg, Campbell was called upon to choose between loyalties owed to those who had assisted him in becoming established. "Early in the week I was approached by Walker & Andrews to take a position in their office and after a term of probation had expired a partnership."[23] Admitting that he was tempted, Colin decided not to accept "until I become fully-fledged here." Troubled afterward that he might not have made the correct decision by staying put, his concerns were allayed when Mr. Hoskin, his Toronto patron, met with him on a visit to Winnipeg. Hoskin informed Campbell that the Winnipeg firm of Archibald, Howell and Vivian were in need of a lawyer to "take up management of their Common Law Practice . . . and then if satisfactory a partnership."[24] According to Campbell, Hoskin, in informal discussion with Mr. Howell, apparently "gave him such a flattering account . . . that an interview was the result." Elated with the subsequent offer he had received, Campbell wrote effusively to Minnie that one "friend like Mr. Hoskin is worth about forty thousand relations and his acts of friendship are of that quiet unostentatious way that wins your best feelings." Meanwhile, any feelings of loyalty Campbell might have had towards Aikins, who had arranged for him to be in Manitoba in the first place, soon dissipated in ambitious rationalizations. Knowing that the Aikins firm would object to his changing firms after they had recruited him, Campbell argued "in this Country it is every one for himself and in doing so I am only doing what another would do . . . ."[25] In the end, however, Campbell did not accept the offer Hoskins had arranged, but temporarily stayed on with the Aikins firm until the timing of a move was more propitious. Several months later a dissatisfied Campbell was again contemplating a change of venue and again turned to Hoskin for advice, reporting that "he thinks I had better try Winnipeg for a while until the Country towns are established and then if not much or sufficient practice in Winnipeg try some one of the Country towns."[26]

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[22] P.A.M., MG14 B21, Colin Campbell Papers, Box #1, Minnie to Colin, 27 January 1882. At the time, Minnie was teaching at the Ontario Ladies College, Ottawa.

[23] P.A.M., MGA4 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 13 April 1882.

[24] Ibid.

While unable yet to offer anything more substantial than professional advice and encouragement himself, Campbell also reported providing information to a former Ontario acquaintance interested in Manitoba. He wrote to Minnie that "an old Toronto chum," Horace E. Crawford of Owen

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[25] Ibid.

[26] Ibid., 24 June 1882.

Sound, "was coming this Summer to prospect," and that he and Crawford were "very firm friends and I trust he may come and reside though goodness knows we now have more than enough Lawyers in Winnipeg . . . ."[27] In spite of the numbers of lawyers, finding the right combination for professional practice, mutual association, and advancement was an ongoing exercise. In Crawford's case, the association formed with Campbell proved a stable one. The two men were in continuous partnership from 1884 until 1903, when Crawford died.[28]

In Winnipeg, Campbell found himself surrounded by numerous young bachelor lawyer friends who undoubtedly believed as he did that it was the "bounden duty of every young man to try and make a name position and future."[29] Buoyed by shared optimism that "Winnipeg will be our capital when we have a through Canadian Railway," young men like Campbell fueled each other's hopes as they travelled to the West.[30] "Just imagine," wrote Campbell, "250 million acres of choice arable land."[31] One of these young lawyers, George William Baker, arrived in Winnipeg about four months before Campbell and was employed by the firm of Walker and Andrews. The pace of the place was frenetic, as Winnipeg was then consumed with a land boom. Starting to work the day after he arrived, Baker wrote, "I could not go out to lunch and had a few rolls eaten in the office." But legal associates could be helpful in providing a practical orientation, as Baker explained, "with the assistance of Alex Bain . . . I engaged a room and board at $30 per month."[32] Finding accommodation, even with assistance, was not an enviable task in Winnipeg. Baker recorded in his diary his first impressions of the city: "Land fever raging, auction sales every night in different parts of the Town--Speculators throng the streets and men speak in thousands of dollars . . . ."[33] In spite of such distractions, when not busy establishing useful contacts, Baker settled into a typical bachelor's routine. Part of the daily regimen was devoted to studying for exams to qualify for practice in the province:

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[27] Ibid., 20 May 1882.

[28] P.A.M., RG3 A1, Attorney General Papers, Colin Campbell, Letterbook #3, Private, p. 364, Campbell to George Campbell, 24 August 1903 and p. 373, Campbell to Walter Bastedo, 26 August 1903.

[29] P.A.M., MGA1 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 26 December 1881.

[30] Ibid.; on 30 January 1882, Campbell reported that after visiting his brother in Minnesota he boarded the train for Winnipeg and found lawyers Alfred Hoskin, Herbert Bolster and George Fisher enroute from Ontario, "so the day passed pleasantly."

> Daily evening programme--After tea at 6 o'clock is read law until 9 o'clock then to the Post Office then to the office to write home and after this, back to the Boardinghouse and read again until after 11 o'clock. I have not been directly asked anywhere, which permits

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[31] Ibid.

[32] P.A.M., MG14 B2, G. W. Baker Papers, Diary, 1881-1882, p. 1, 30 August 1881. The diary was written during his first months of residence.

[33] Ibid., p. 2.

more reading.[34]

Baker thought that Winnipeg was very unattractive for married lawyers who would find it difficult to relocate their families, but "with young fellows who have never settled down in life," it was much easier for them to "put up with a quasi-camping existence."[35] The nature of that camping existence is described in a further entry in his diary. "I had to take two very good empty rooms . . . but with bare walls," and since "my companion has a jug and a basin and a stove and wood and two lamps and a shakedown," it was necessary only "to purchase a straw mattress."[36] The understanding that he was not alone in this constant search for suitable quarters seemed to provide Baker with a measure of resigned consolation. "Fellows are always on the hunt," he wrote, "It is the greatest bete noir of Winnipeg."[37] Finding a boarding arrangement where meals could be taken, sometimes at irregular times, as the work day demanded, was not an isolated problem either. In the summer of 1882 Colin Campbell and his roommate found it necessary to seek new lodgings because, as he explained, the "old maids are a little cranky so we have taken a room and will henceforth take our meals at a restaurant where they are not put out if you do not get in to dinner at 1 o'clock sharp."[38]

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[34] Ibid., p. 5.

[35] Ibid., p.7.

[36] Ibid., p. 13.

[37] Ibid.

Sharing the common problems of living in Winnipeg and unbothered by the constraints of family life, bachelor lawyers spent a good deal of time together away from the professional atmosphere of law offices and the court. As boarding house roommates, while taking meals together in restaurants or baths in the Red during the heat of summer, attending sporting and cultural events, as fellow members of clubs and the church, engaging in sports and even during infrequent excursions as travelling companions, the bonds of a professional community were being established and reinforced. Campbell wrote to Minnie that "tonight am going to a bachelor entertainment. My old Toronto friend Isaac Campbell & Mr. Hough . . . & several other lawyers live together in Bachelor quarters and they have expected a number of us around," adding that they expected "to have a good time."[39] While lawyers did not restrict their social contacts to other lawyers, such occasions were useful for the conviviality they provided, and for the crystallizing of a community identity as common goals were articulated or simply quietly understood.[40]

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[38] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 15 July 1882.

[39] Ibid., 12 January 1884.

[40] In a similar vein, see Michael Bliss, "'Dyspepsia of the Mind': The Canadian Businessman and his Enemies, 1880-1914," Readings in Canadian History Post-Confederation, 2nd ed., R. Douglas Francis and Donald B. Smith (Toronto, 1986); Elizabeth Bloomfield, "Community Leadership and Decision-Making: Entrepreneurial Elites in Two Ontario

Being together also allowed lawyers to size each other up. Their foibles and, therefore, their reliability became well known to all. Shortly after arriving in Winnipeg, Campbell underlined the fragility of one's reputation in an inchoate legal community, by relating the story of a bachelor acquaintance who had just died. "When I first knew him he had a good practice in Toronto but success was too much for him" and he found that "he must quaff the flowing bowl until it quaffed him." With his reputation damaged and without clients, Campbell's acquaintance had set out to restore his fortunes in Winnipeg, where Campbell sadly reported that "Poor Macdonald for a while stood up but he fell and a week ago tonight he was taken to the Hospital and died of Delerium." For many other young lawyers the stress of competition was less fatal. Nonetheless, for some of them the climb to prominence was never to be realized.

Marriage, of course, ended the bachelorhood of lawyers like Campbell, but it could also serve as an important bridge to the social world of a more established, senior and perhaps even more prominent community of lawyers and their business contacts. Reflecting on these matters and also pressing her on the question of matrimony, Campbell wrote to Minnie, "you know that the same confidence is not placed in unmarried men. Especially the general public

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Towns, 1870-1930," Power and Place: Urban Development in North American Context, ed. Gilbert A. Stelter and Alan F. J. Artibise (Vancouver, 1986).

think he is not reliable."[41] Earlier that month he had reminded her that "to build up an honorable reputaton is my great ambition in my profession."[42]

Campbell remained with the firm which had recruited him for Winnipeg until it was convenient for him to seek a new arrangement. The parting which took place in August 1882, about seven months after his arrival, was precipitated partly, claimed Campbell, because of personality differences. "J. A. M. and I did not agree very well nor does he get on well with any of the office," wrote Campbell, adding that "in separating no love is lost."[43] Colin Campbell briefly established a practice on his own, but was soon complaining that when he was not at the office "a client would be sure to call."[44] Apparently, a number of his clients were gained by associations he had made while working for the Aikins firm. As he was leaving the firm, he wrote Minnie that "I have promises of business from parties I did not think would be clients but I am anxious for many more such prizes."[45] In order to satisfy the clients he had and in order not to lose potential clients, Campbell had within a month taken a partner. His hasty selection of Mr.

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[41] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 28 June 1883.

[42] Ibid., 15 June 1883.

[43] Ibid., 12 August 1882.

[44] Ibid., 11 September 1882.

[45] Ibid., 12 August 1882.

Bolster as a partner was one he would soon regret.

In the meantime, Campbell took advantage of every opportunity to appear in court. He welcomed the exposure as well as the remuneration involved, but often had quite different reactions to the clients he served. "I defend O'Brien," he wrote, whom he thought was "guilty," but recognizing the dilemma, argued "what are you to do he protests his innocence then my only duty is to urge that the evidence is insufficient that there is a reasonable doubt the benefit of which the prisoner should get." As for the result of the trial, Campbell reports that his client did receive the benefit of doubt and felt thankful, but Campbell added sardonically, "however he hasn't felt sufficiently thankful to pay up."[46] Several months later, Campbell reported that he had worked all week on one case. "Luckily we were successful but just think of poor lawyers working so hard and then get beaten." Contemplating the professional result of defeat, Campbell remarked that it "generally costs a lawyer a great deal more anxiety than his client."[47] Of an appeal case he was working on, however, he wrote, "it is a real pleasure to work for clients you like and in a case you get interested in."[48] By the late spring of his second year in Winnipeg, Campbell was able to exude confidence that his reputation was in good order. Although he saw many other lawyers doing "dishonorable acts," he felt that in his "professional life everything" seemed "to be going so well."[49]

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[46] Ibid., 20 January 1883.

[47] Ibid., 5 May 1883.

[48] Ibid., 19 May 1883.

Confident of his standing at the bar, Campbell entered into negotiations with Beverley Robertson and Horace Crawford to form a new partnership without letting his partner, Bolster, know. To explain what was occurring, Campbell wrote to Minnie the next day. "How did it come about? . . . as a result of many circumstances Robertson's firm dissolved and he being anxious to form a good strong new firm was on the look out and through friends we came together last night about midnight" and "concluded satisfactory arrangements."[50] Recognizing that the move would greatly improve his "legal standing," Campbell also quickly pointed out that "a small firm cannot command the same standing & reputation."[51] While Campbell was elated with the new partnership be had formed, there was still the delicate matter of breaking the news to his existing partner. Regarding it simply as a business decision, Campbell could not entirely suppress his regret over the timing, "in view of his [Bolster's] approaching marriage." But to "let a golden opportunity slip by" would have been worse, he thought, remarking, "I feel that I make an important step toward my ambition ah! it is great to be ambitious . . . ."[52]

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[49] Ibid., 15 June 1883.

[50] Ibid., 20 June 1883.

[51] Ibid.

What made the new partnership attractive was the degree to which they would be able to specialize. Campbell described the decision: "I will take Common Law or Civil Law and Commercial Department, Crawford the Chancery and Robertson insolvency and general work. We each get what we like and what each is best up in."[53] The new firm reflected an effort to combine particular legal skills and interests, but a broad public exposure was also necessary to be successful, as Campbell revealed when he pointed out that "Robertson is Episcopalian, Crawford a Methodist & myself a Presby [sic]."[54]

Making the break with Bolster was eased somewhat by Campbell's growing dissatisfaction with Bolster's performance as much less than an equal partner in sharing office responsibilities.[55] Finalizing the break with Bolster was complicated because he was "somewhat overdrawn,"[56] yet Campbell was not able to entirely erase his own guilt over the matter. A month later he wrote, "I don't know what he is going to do and he feels very badly but I am not to blame in any way."[57] Being unceremoniously dumped in this way did not go unnoticed by the legal community, but it was not unusual at this time for the goal of establishing strong firms was very much on the minds of lawyers whose status would be measured by the quality of their legal associates as much as by their own professional skills.[58] Bolster's difficulties did not end there nor was Campbell yet rid of him. Nearly a year later Campbell wrote, "I am disgusted with Bolster he promised time without number to collect three acc's [sic] amounting to nearly $700."[59] For Campbell it was especially "provoking to lose money by other peoples carelessness." He was glad to be "rid of him," for, he explained, "He [Bolster] would worry my life out . . . ."[60]

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[52] Ibid.

[53] Ibid., 28 June 1883.

[54] Ibid., 7 July 1883.

[55] Ibid., 28 June 1883.

[56] Ibid., 7 July 1883.

[57] Ibid.

While lawyers as individuals won the positive or negative recognition of their professional peers in a variety of contexts, some lawyers, elevated to positions with potentially greater influence, were able to broaden the impact that their social transactions would normally have within professional circles. This was especially true for those who were chosen as "benchers" of the Law Society during its first decade of operation. The act creating the Law Society of Manitoba in 1877 named nine benchers[61] and in

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[58] An examination of legal cards between 1878 and 1888 reveals that partnerships were changing constantly.

[59] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 17 May 1884.

[60] Ibid.

[61] The benchers named were: J. Royal, J. Dubuc,

1883 the first election of benchers was held, followed by subsequent elections every three years. Under the strains of rapid growth and limited experience there was much to occupy their collective attention.

Among the concerns addressed by the first benchers, whose membership clearly represented the interests of the firstcomers, was the question of admission for practice in Manitoba. Indicating that they intended to protect their membership from unwanted interlopers, the Society, through its benchers, late in 1877 took action to curtail a case of unauthorized practice.[62] Anticipating that the arrival of numerous lawyers from outside the province might create a ruinously competitive situation, the leaders of the profession were by 1879 pressing the legislature to tighten up the restrictions for legal practice by passing an amendment to the Law Society Act.[63] The new provisions demanded that every lawyer entering Manitoba pass an admission examination and that solicitors serve one year in articles in Manitoba. The influence of the profession's brokers is evident also in the substance of an act governing Conveyancers passed two

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J. F. Bain, D. M. Walker, F. Cornish, S. Blanchard, S. C. Biggs, J. Ryan and A. Macdonald.

[62] A.W.C.L.H., A2793, Law Society Minutes, 16 November 1877: "Moved by Mr. Walker and seconded by Mr. McDonald that the Treasurer be instructed to take the necessary proceedings to enforce the act respecting the Law in the case of Mr. Arthur . . . Wood who is reported as practising without authority."

[63] Statutes of Manitoba, 1879, 42 Victoria, c.15, s.142.

years later.[64] The provisions favored the interests of the profession, ensuring that land transfer transactions would not slip entirely out of their control. The Act provided that individuals other than barristers or attorneys could not be appointed as conveyancers without a satisfactory recommendation from a judge of the Queen's Bench. But when the government later moved to name lay conveyancers the editors of the Manitoba Law Journal presented the position of the profession. "In the interests of the community we protest against granting permission to practice as a conveyancer to every one who can scrawl with a blunt pen."[65]

While professional men and concerned politicians could understand and sympathize with the desire on the part of Manitoba lawyers to restrict the entry of non-trained lawyers from legal tasks like land transfers, they were much less pleased by bold-faced efforts to prevent lawyers from other provinces from joining the profession in Manitoba. His displeasure showing, John A. Macdonald issued an unequivocal threat to Premier Norquay:

> I was rather astonished on being informed that your Legislature had ostracized my profession's brethren from the other provinces and that they must undergo an examination de novo in Manitoba.
>
> I suppose this must be a consequence of the higher standards of education with you than in Toronto or Quebec. At all events it has excited the indignation of the profession and will continue to do so, and I fear that some . . . Legislation on the subject will be pressed upon the consideration of the Dominion

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[64] An Act Respecting Conveyancers, Statutes of Manitoba, 25 May 1881, 44 Victoria, c.25 (Repealed in 1933).

[65] 1 (1884):138.

> Parliament next session, such for instance as a provision that no Superior or County Court Judges will be appointed from the Manitoba Bar, and that no Manitoba professional men will be allowed to practice in the Dominion Courts or have any Government business, so long as this restriction is continued.[66]

Expecting that his application of pressure would produce the intended result, Macdonald added, "I am sure that your Attorney-General will not sanction such and will see to its repeal at an early day. This of course is entre nous entirely." The restrictions which Manitoba's Law Society had obtained caused its other critics to cry foul. One individual wrote using a popular appellation: "The men who happened to come here first have formed a ring, formed a Law Society, and work the oracle for their own benefit."[67] The criticism continued unabated until early in 1882 as the influx of lawyers from outside Manitoba continued to draw attention to the perceived injustice of the restriction.

Beginning in 1882, the provincial government introduced legislation designed to remove the more objectionable features of the earlier restrictions, but not everyone was pleased with it. The editors of the Free Press saw it simply as a way for the sons of federal politicians to practice in Manitoba. "We suppose that this is the only method by which young Macdonald and young Tupper could ever be admitted to the bar of Manitoba, where the accidents of birth are not considered the equivalent of brains."[68] Signing his letter "Law Student," another writer outlined to the editor of the Free Press[69] his views on the matter, arguing that "those lawyers from other Provinces who came here early in our history" were justified in establishing a "reasonable protection." Revealing the intensity of his bias against newcomers, the writer pointed out that "Manitoba is looked upon by the other Provinces as being some little pasture field which they all own jointly, and which must conform to the convenience of such persons who choose to turn their attention hitherwards." His bitterness showing, the anonymous student wrote,

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[66] P.A.C., MG26A, Macdonald Papers, Letterbook #21, Norquay, 22 October 1881, pp. 513-14, Private.

[67] Manitoba Free Press, 18 November 1881.

> They consider that for us to place restrictions is impudence. They know everything better than we do; that we ought to be happy to receive them with open arms, and consider ourselves highly honored by their condescension in coming to reside with us.

The amending legislation reduced the articling time from five years to three years for students who were enrolled by the Law Society at the time the law was passed, prompting an observation that it was perhaps done to reduce "fear that out-of-province lawyers would saturate the profession before the students completed the normal five-year period."[70]

For lawyers from Ontario like Colin Campbell, the indication that a legislated change was imminent was welcome news. He observed that "It is so unreasonable the present way."[71] On 23 March 1882 Campbell gave notice of his intention to sit for the required exam in May, even though he recognized the "very great risk of being . . . metaphorically 'plucked.'"[72] In a subsequent letter he explained that lawyers were anxiously awaiting the outcome of legislation for "if it passes we will not have to pass any exam nor serve the year."[73] Campbell had decided to prepare for the exam in any case, no matter what the outcome, but was, like other lawyers from Ontario, annoyed with the state of uncertainty surrounding it. When the anticipated remedial legislation finally came it was a disappointment. On 3 June Campbell wrote that the "legislature passed an act supposed to be for the express purpose of doing away with the examination where parties had undergone such an exam in other provinces yet it is so ambiguously worded that it in effect does not do so."[74] Two days later a solution was advanced after a meeting of the benchers at the court house. June the eighth was set for an examination of out of province barristers "before a committee of the benchers and the examiner."[75] Campbell was among many examined that day, happily reporting afterward that he was "not plucked" and now was finally "fully fledged."[76] While restricted entry remained a hallmark of professional life,[77] the attempt by firstcomers to the Province to restrict the entry of lawyers arriving later was not repeated.[78]

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[68] Ibid., 8 April 1882.

[69] Ibid., 28 April 1882.

[70] See Gibson, Substantial Justice, p. 132.

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[71] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 15 and 18 February 1882.

[72] Ibid., 23 March 1882.

[73] Ibid., 1 April 1882.

[74] Ibid., 3 June 1882. The Act in question removed the examination for barristers from provinces which had a reciprocal arrangement with Manitoba. At the time, however, only Nova Scotia would accept Manitoba credentials automatically. Solicitors did not have to article but were forced to take an exam. See Statutes of Manitoba, 1882, 45 Victoria, c.1.

Indicative of the rapid growth in the profession and the much larger pool of talent to draw from, the election of benchers in 1883 saw only two of the original benchers returned.[79] The results diminished the capacity of the firstcomers to influence the direction of the profession after 1883 as they had before, and introduced a selection process every three years which emphasized professional popularity and more intense infighting between legal rivals and firms. Colin Campbell provided a glimpse of this activity in 1883:

> It is now nearly eight and at that hour there is a

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[75] Manitoba Free Press, 6 June 1882; also see A.W.C.L.H., A2793, Law Society Minutes, 8 June 1882.

[76] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 11 June 1882.

[77] See Ronald Hamowy, Canadian Medicine: A Study in Restricted Entry (Vancouver, 1984) for parallel developments in the medical profession.

[78] The Manitoba experience did not, however, prevent attempts by firstcomers elsewhere in Western Canada to impose similar restrictions. See "Northwest Legal Ring," Manitoba Free Press, 14 November 1885.

[79] The benchers elected were: A. C. Killam, Sedley Blanchard, Heber Archibald, Fred McKenzie, S. C. Biggs, J. B. McArthur, Hugh McMahon, J. A. M. Aikins, and J. S. Ewart.

> meeting of the bar to see about bringing out candidates for the position of bencher. The three objectionable men are JAM Aikins Biggs & McKenzie. . . . we desire to continue to combine to beat them if possible.[80]

Despite the efforts of Campbell and his friends, three of the "objectionable" men were returned as benchers.

By virtue of their position, the benchers of the Law Society were expected to advance the concerns of all practitioners for improvements in legal machinery and infrastructure in the province. The operation and financing of a working law library for the use of the members in Winnipeg, for example, was typical of the concerns addressed. Because an experiment with "law stamps," which were expected to raise revenue for a library and for courthouse accommodations, never produced the funds required for those purposes,[81] the Society began drawing on its own funds to purchase books and, beginning in 1881, confirmed the appointment of William Leggo as part-time librarian at ten dollars per month. He was also Assistant Secretary of the Society.[82] Leggo was succeeded by two part-time librarians[83] before W. Taylor accepted a multi-faceted appointment as Sub-Secretary, Librarian and Society Solicitor in June 1883, a post which he occupied until 1914. An ambitious and short-lived plan to build their own centrally-located library and office building[84] was abandoned by the Society when arrangements were made for these functions to be located in the new brick court house. While the operation of the library was crucial for all lawyers, supervising the purchase of needed accessions, responding to petitions concerning access, especially during the evening and on Saturday, and threatening often unrepentant members with a cancellation of privileges for failing to return books,[85] became routine matter for the benchers. During the eighties the greatest challenge came in attempting to respond to the library needs of Society members practicing in the outlying centers of Brandon and Portage la Prairie.[86]

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[80] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 21 April 1883.

[81] The Law Stamp Act, Statutes of Manitoba, 1875, 38 Victoria, c.15, s.13 first introduced the stamps. Stamps marked L.S. were to be used as a fund for the Law Society, but no monies were remitted to the Society. See Lee Gibson, "A Brief History of the Law Society of Manitoba," Law Society of Manitoba, ed. Cameron Harvey, p. 42; and E. Loftus, "Synoptic History of the Manitoba Law Society," paper read before the Conference of Representatives of Governing Bodies, 1931, A.W.C.L.H., A316, #28, p. 39.

[82] A.W.C.L.H., A2793, Law Society Minutes, 21 July and 12 November 1881.

The question of smooth and efficient operation of the courts attracted similar attention. 1879 witnessed the formation of Eastern and Western Judicial Districts, centered respectively in Winnipeg and Portage la Prairie, and legislation revising the County Courts. Keenly interested in the courts, Chief Justice Wood assisted in the drafting of legislation, but as was frequently his wont, he exceeded the expectations of the government and annoyed lawyers at the same time. Wood introduced the new procedures for the courts without the approval of the government by having the Queen's Printer print the act in pamphlet format, including a preface he had written himself. Praising his own legislative drafting handiwork, he came close to claiming that the need for lawyers was virtually eliminated in the new court system. Enraged by Wood's indiscreet and misguided behavior, the provincial cabinet ordered all the pamphlets returned to the Queen's Printer for rebinding--minus Wood's ill-advised preface.[87] By 1881 senior members of the bench and bar were also calling for an improvement in the workload expected of officers of the court. By that time so many cases were being heard in the Queen's Bench, in Law and in Equity, that many lawyers were convinced that the single prothonotary, Mr. Macdonnell, could no longer handle the workload without cases falling into arrears. This resulted in the creation of a separate office of Master in Equity, which Mr. Leggo filled,[88] thus lightening the workload for the prothonotary.

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[83] Ibid., 26 August 1882 and 7 February 1883.

[84] Ibid.

[85] Ibid., 21 December 1883 entry, for example: "Report from Librarian that G. B. Gordon had taken a book out of the Library to his office and had not returned same. Ordered that Mr. Gordon be written that if he repeats the offence of carrying off books from the Library, he will be deprived of the use of the Library."

[86] Ibid., 14 September 1883, 30 July 1884, 11 December 1885, and 4 October 1887.

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[87] Gibson, Substantial Justice, p. 135; the preface of Wood's work was entitled "A complete Code of Law, Practice and Procedure in County Courts, designed to make every man his own lawyer," and was reprinted in Western Law Times 1 (1891):14-15.

[88] Officially Leggo filled the offices of Master in Chancery, Referee and Surrogate Court Clerk. He had previously served as Master in Chancery in Ontario and had

Recognizing that judicial appointments were largely a political affair, influential members of the legal profession, nonetheless, did what they could in professional circles to ensure that selections were suitably qualified. In 1879 replacements were required for deceased puisne judges McKeagney and Bétournay. Chosen as the francophone replacement for Bétournay, Joseph Dubuc gladly ended his financially precarious career in federal politics by accepting an appointment to the bench in November, 1879. Anticipating Bétournay's death, an ambitious Joseph Royal had also applied for the position,[89] but Archbishop Taché recommended Dubuc to the Prime Minister instead.[90] Dubuc's appointment occasioned no complaint, but filling the other vacancy proved to be more difficult.[91] After delaying the

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written two books on the subject. Manitoba Free Press, 12 March 1881 also provides an indication of the increasing case load.

[89] Royal was also giving advice:

> "I would respectfully submit that the time is passed when the Government could with propriety send up here a judge from Quebec as our civil law, the practice in our courts and our statute enactment have become altogether different from the same in Quebec" (P.A.C., MG26 A, Macdonald Papers, Royal to Macdonald, p. 118,181, 2 November 1879).

[90] Maureen McAlduff, "Joseph Dubuc," pp. 238-39. That Dubuc was himself confident of his qualifications and happy for the change is evident: "Mais j'étais bien aise de sortir de la tourmente de luttes politiques pour entrer dans l'atmosphère digne et calme de la magistrature, et d'ailleurs, plus conforme à mes gouts" (P.A.M., MG14 B26, Dubuc Papers, Mémoires d'un Manitobain, p. 86).

[91] Perhaps the Prime Minister had in mind the warning he received from former Lieutenant Governor Morris, who

decision for nearly a year, John A. Macdonald appointed a reluctant James A. Miller,[92] a St. Catherines, Ontario lawyer, whom some thought too young,[93] promising as an inducement, to elevate him to the Chief Justiceship when Wood, then in ill-health, vacated the position.[94] Some disappointment was initially expressed that a Manitoban such as Attorney-General Walker was not chosen, although Miller's professional qualifications were generally regarded as satisfactory. A grumbling public comparison was indicative, however, of such outside appointments:

> We know of no reason why Winnipeg should not train as good lawyers on general principles as St. Catherines. Our city is the more important point of the two. Our legal business is the more varied and peculiar. . . . We know of no reason why the Attorney-General of Manitoba should not be the peer of the best lawyer in any part of Ontario outside, perhaps, of Toronto.[95]

When in May, 1892 Miller threatened to resign the bench in protest over the low salaries received by Manitoba judges, benchers agreed with him but did not support his tactics.[96] They were no doubt mindful that the operations

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emphasized that whoever was chosen be strong, as "Wood will make things hot for him, if he cannot rule him" (P.A.C., MG26 A, Macdonald Papers, Morris to Macdonald, p. 114,330, 9 October 1879).

[92] For biography, see Dictionary of Canadian Biography XI, s.v. "Miller, James Andrew," by Lee Gibson.

[93] Canada Law Journal 16 (November 1880):285.

[94] P.A.C., MG26 A, Macdonald Papers, Letterbook #22, Macdonald to Miller, 13 April 1883, Private.

[95] Manitoba Free Press, 25 October 1880.

[96] A.W.C.L.H., A2793, Law Society Minutes, 27 May 1882.

of the court could become stalled. Miller did not carry out his threat on this occasion but the entire affair annoyed the benchers enough to pass a resolution of discontent which was sent to the Minister of Justice:

> Whereas the bar of this province has attained the size and importance which justifies the appointment of judges for this province from amongst its members, therefore the bar . . . requests the government . . . to endeavour to secure for that position some efficient member of our bar before appointing judges from the bar of another province.[97]

Easily the most difficult task facing the leading members of the bar before 1882 was how to handle the delicate matter of securing the removal from office of Chief Justice Wood who had become both an embarrassment and a liability. The indiscretions of Wood's improvident life-style could be overlooked by the bar, but not his judicial improprieties. Allegedly, in a case being heard in his court in 1880 in which Nathaniel Francis Hagel[98] was the lawyer for the accused, Hagel arrived early at the court and spotted a prepared judgment in the Chief Justice's room. The judgment went against Hagel's client in a case not yet tried. When court convened later in the morning, Hagel moved to impeach the Chief Justice for preparing a judgment before the trial, thus forcing Wood to hurriedly leave the bench that day and eventually resulting in a decision in

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[97] Ibid.

[98] For biography, see Roy St. George Stubbs, Lawyers and Laymen of Western Canada (Toronto, 1939), Ch.II; "The Late N. F. Hagel, K.C.," Manitoba Bar News 8, no.12 (September 1936):313-19 and 9, no.1, (October 1936):333-35.

Hagel's client's favor when the case was rescheduled.[99] In a small legal community such an example of judicial misconduct was soon known to everyone.

Wood was hampered further by a stroke suffered in the fall of 1880 and efforts were made behind the scenes by John Norquay to secure his retirement on the grounds of his incapacity to perform.[100] Never one to exercise restraint in such matters, an impatient Henry J. Clarke, early in 1881, organized a condemnatory petition which lawyer-politician Joseph Royal presented to the House of Commons in March.[101] The charges contained in the petition ranged from simply fanciful to firmly established. The petitioners alleged that Wood had altered documents in order to "procure an illegal outlawry of Louis Riel and others" and had tampered with the jury selection process in the Francois Lépine trial to include "such French half breeds only as were well known to be the declared enemies" of Lépine. Charges detailing "notoriously partial" judgments, the "habit of introducing local and Dominion politics" both in court and in the barber shop, an open hostility toward French-Canadians, the constant public use of abusive and enraged language "towards both suitors and members of the Bar," the "habit of taking the unsworn statement of persons on the street or at his private residence," and his "gross exhibition of intemperance while in circuit" were well-founded.

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[99] Roy St. George Stubbs, "Hon. Edmund Burke Wood," Manitoba Bar News 34, no. 4 (December 1962):129-30.

[100] P.A.C., MG26 A, Macdonald Papers, Norquay to Macdonald, p. 173,267, 17 January 1881.

[101] The document is dated 3 January 1881.

If true, the most serious allegations supporting a want of confidence were that his judgments favored certain members of the Bar, some being "his own near relatives," with "a particularity so very notorious and so clearly proved in the eyes of the public that a large number of litigants abandoned their own atttorneys, and in self-defence felt compelled to employ the said members of the Bar so favored by him." A specific instance cited was the case of Hogan v. Manning in which the plaintiffs won in a matter involving about $5,000, their attornies being the Chief Justice's "own son and his nephew Messrs. Biggs & Wood."

After debating what to do with the petition, the House of Commons ordered a departmental investigation, but long before their decision was taken, Wood had vigorously answered all the charges in a printed grand jury address and in a counter-petition sent to Parliament. Before a serious rift between supporters and detractors in the legal profession of Manitoba could develop, Chief Justice Wood suffered a second and fatal stroke while conducting court on 7 October 1882.[102] In an editorial eulogy shortly afterwards in the Kingston Whig, in which all the criticisms levelled against him were seen in political terms alone, it was argued that a man of "such strong characteristics could not fail to make enemies among the high handed Tories of Manitoba."[103] The Canada Law Journal reminded those who might critize to recall that "it fell to his lot to do the chopping, slashing and clearing, so to speak, of a new country."[104]

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[102] See Canada, Sessional Papers, 1882, no. 106. The Manitoba Free Press, 15 March 1881, condemned the petition and launched an attack upon Clarke's improprieties. Shortly before Wood's death, Colin Campbell revealed his own serious reservations about Wood: "I sent you a paper with the Judgment of the Chief Justice & his opinions of the Jews--he is going crazy as you will perceive" (P.A.M., MG14 C6,

One might add in his defence that his work also defended Manitoba's legal integrity in a unique way during his final days. In Wood's judgment in the case of Boultbee v. Shore he had upheld the legislation which fused law and equity in one Court of Queen's Bench. Winnipeg lawyer W. E. Perdue lauded the action,[105] as did the editors of the Canada Law Times, in pointing out the advantages of Manitoba's system over the Ontario practice:

> At an early date in the history of the Province, a blow has been struck at the attempt to establish in a Province with one Superior Court a bifurcated system of jurisprudence. The fortunate suitor is now in no danger of becoming impaled upon the wrong horn.[106]

Minnie Campbell Papers, Box #1, Colin to Minnie, 12 August 1882).

[103] Quoted in Manitoba Free Press, 16 October 1882.

[104] Canada Law Journal 18 (1882):530.

[105] W. E. Perdue, "The Fusion of Law and Equity in Manitoba," Canada Law Times 2 (1882):428-31.

[106] Canada Law Times 2 (1882):434. A guide to the Ontario court experience is Margaret A. Banks, "The Evolution of the Ontario Courts 1788-1981," Essays in the History of Canadian Law, Vol. 2, ed. David H. Flaherty (Toronto, 1982).

Determined that the Chief Justice to succeed Wood would not be nearly as flamboyant nor as detrimental to the dignity of the courts and the profession and that a decision be made expeditiously, a general meeting of Manitoba's lawyers was held not long after his death.[107] The plan for the replacement of the Chief Justice favored by the profession and urged upon the federal minister of justice, reflected both local pride and practical considerations. The Manitoba Bar urged that one of the two current puisne judges be chosen, and specifically identified Thomas Wardlaw Taylor, who had authored a textbook on equity and was Master of Ordinary in Ontario, as a desirable puisne vacancy replacement. Expecting the Prime Minister to make good on his promise to elevate him to the Chief Justiceship, Justice Miller then threatened to resign if not appointed.[108] The Prime Minster chose to ignore both the entreaties of the Manitoba Bar and the pressuring tactics of Miller. Political considerations prevailed.[109] The announcement that Lewis Wallbridge,[110] a Bellevue, Ontario lawyer and long-time Conservative would be Chief Justice, produced an expected hasty resignation from Miller, which one local partisan paper thought was "a gain to the bench."[111] The choice of a replacement puisne judge, necessitated by Miller's resignation, was popular with the legal profession, as their original candidate for Chief Justice, T. W. Taylor, was accepted.[112]

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[107] A.W.C.L.H., A2793, Law Society Minutes, 5 and 13 October 1882; see also Canada Law Times 3 (December 1883):576; P.A.C., MG26 A, Macdonald Papers, A. C. Campbell (Macdonald's former law partner and also Postmaster General) to Macdonald, pp. 82,401-2, 17 November 1883.

[108] P.A.C., MG26 A, Macdonald Papers, A. C. Campbell to Macdonald, p. 82,116, 7 November 1882.

[109] Ibid., p. 82,104, 19 October 1882; p. 82,117, 7 November 1882; p. 82,150, 6 December 1882; and, p. 82,158, 9 December 1882.

[110] For biography, see Dictionary of Canadian Biography XI, s.v. "Wallbridge, Lewis," by Bruce W. Hodgins.

Leaders in the profession could not ignore the unusual pressures placed upon the courts during the boom conditions of the early eighties and constantly urged that the judiciary be buttressed with greater numbers. The appointment of two full-time County Court judges, Joseph Ryan and former Attorney General D. M. Walker in August 1882,[113] relieved the Queen's Bench justices of some of their circuit court duties, but the profession was not yet satisfied[114] and through their political contacts kept up steady pressure for an additional appointment.[115] Responding to the pressure and with an eye to salaries, Macdonald wrote to Premier Norquay in June 1883 that he favored increasing the use of County Court Judges "instead of increasing the number of your Superior Court Judges."[116] Following that policy, the next month he appointed W. D. Ardagh to the County Court of the Eastern Judicial District.

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[111] Manitoba Free Press, 7 November 1882.

[112] P.A.C., MG26A, Macdonald Papers, J. C. Aikins to Macdonald, p. 77,444, 13 June 1883. For biography see Margaret Charteris-Thomson, The Colonial Ancestry of the Honorable Thomas Wardlaw Taylor Chief Justice of the Province of Manitoba, 1887-1899 (London, 1937).

[113] Joseph Ryan was appointed to the Central Judicial District centered in Portage la Prairie while D. M. Walker served the Western Judicial District from Brandon. For biography, see Philip C. Locke, "His Honor Judge Joseph Ryan," Manitoba Bar News 13, no.9 (May 1941):93-94 and T. L. Hartley, "A Further Note re: Judge Walker," Manitoba Bar News 13, no.9 (May 1941):98-100.

[114] A.W.C.L.H., A2793, Law Society Minutes, 13 October 1882.

Recommended to the Prime Minister as a staunch and deserving political supporter,[117] and already present in Manitoba, Ardagh had earlier sought the position. In a private letter about the Selkirk County judgeship, he explained that his current position as Deputy Attorney General might soon become untenable:[118]

> I am desirous just now to put in a reminder as I may shortly be without occupation--ex-Judge Miller is trying the same game with Norquay that he played so unsuccessfully in the Chief Justice matter--a little bluff--but in the present instance I am afraid that he is likely to win and become Attorney-General if Norquay is sustained at the polls.

Fearing that he "would not care to retain the position of his [Miller's] deputy," Ardagh related to Macdonald that he was "anxious to have a prospect of something to fall back upon," although he would have preferred something in Ontario. Pointing out that he was seriously in debt due to property devaluation in Manitoba and unable to bring his family out to join him because of it, Ardagh shamelessly appealed for "an assured position." While Ardagh's service as a judge was highly respected, his appointment did not immediately end his financial hardships,[119] nor did it end public and professional concerns that the courts were still overtaxed and judges overworked.[120]

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[115] P.A.C., MG26A, Macdonald Papers, J. C. Aikins to Macdonald, p. 9,964, 30 March 1883.

[116] Ibid., Letterbook #22, Macdonald to Norquay, 15 June 1883.

[117] Ibid., Senator Allen to Macdonald, p. 179,604, 14 April 1882.

[118] Ibid., W. D. Ardagh to Macdonald, p. 9,956, 10 January 1882.

Reflecting their similar concerns, a prominent bencher, S. C. Biggs and the recently arrived Judge Ardagh, made common cause in statistically presenting the need for more judges. By going public in a newspaper article, Biggs eventually convinced the Ontario based Canada Law Times[121] that the number of cases handled by Queen's Bench judges in Manitoba, compared to their counterparts in other provinces, was both inequitable and legally unacceptable. In a report on the County Courts covering the latter half of 1883, Ardagh made similar claims.[122] J. S. Ewart,[123] bencher and editor of the nascent Manitoba Law Journal, underlined the urgency of the matter: "There was an extraordinary scene in Court upon the last day of Term. A large number of the Bar appeared, and by their spokesmen expressed to the Bench their sense of the impossibility of procuring justice for their clients."[124] While acknowledging that judges were without the power to remedy the problem, Ewart explained, "The hopelessness of the situation . . . brought judges and barristers together." The federal government had earlier reassigned speedy criminal trials from Queen's Bench Courts to the County Courts,[125] but the action had done little to abate the general call for the relief additional judicial appointments would afford. Noting that Manitoba had passed its "boom" stage with its attendant heavy demand for specific realty legal services, Ewart editorialized on the need for Ottawa to appreciate that Manitoba was becoming a mature society which required a properly functioning judiciary:

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[119] Ibid., J. C. Cox Aikins to Macdonald, p. 77,443, 13 June 1883 and J. Ryan to Macdonald, pp. 193,635-36, 24 March 1881.

[120] Manitoba Free Press, 25 December 1883; A.W.C.L.H., A2793, Law Society Minutes, 5 October 1883.

[121] 3 (1883):79 and 4 (1884):65.

[122] His findings were recorded in the Manitoba Law Journal 1 (1884):43-45.

[123] For biography, see Roy St. George Stubbs, "John S. Ewart: A Great Canadian," Manitoba Law School Journal 1 (1962-65):3-22.

> In England the Courts sit at eleven and rise at half past four, and a week of work is followed by two wherein judgments may be prepared and studies prosecuted. Judges should not be subjected to the narrowing influence of total engrossment in legal work. They should have leisure, not only for the complete mastery of all cases they may have to decide, but also for the pursuit of such literary or scientific subjects as may relieve the monotony of their work and keep their minds enlarged and vigorous. In Ontario this is to some small extent held in view, but in Manitoba, the judges may live, work and die, unknown and unseen beyond the court house walls, leaving nothing for posterity but a number

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[124] Manitoba Law Journal 1 (1884):46.

[125] Gibson, Substantial Justice, p. 146.

> of hastily written judgments and arrears of work that should render a successor impossible.[126]

Despite the apparent hardships associated with fulfilling the expectations of judicial office in Manitoba, the editors of the Canada Law Times found it ironic that once the House in May voted a salary increase for another judge for Manitoba, there was no shortage of aspirants. They were amused that so many were "ready to sacrifice themselves for their country, and to accept a salary much below the alleged average income of a Manitoba practitioner."[127] They conjectured that a "seat on the Bench is evidently now regarded as a 'corner lot' amongst our brethren of the Prairie Provinces." While Ontario lawyers might poke fun, J. S. Ewart, in speaking for the Manitoba legal profession, pointed out that the geographic origin of judicial appointees was not the only matter requiring a remedy. Based upon his own comparative analysis of "cost of living," "ability and standing of the man" and "the character and importance of the work to be done," Ewart found judicial salaries in Manitoba to be inequitable compared to the older Provinces.[128] Alluding to a colonial theme, he complained that "our judges are paid less than judges in any other part of Her Majesty's dominions."[129]

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[126] Manitoba Law Journal 1 (1884):46.

[127] 4 (May 1884):234.

[128] Manitoba Law Journal 1 (September 1884):140.

[129] Ibid., p. 141. In a subsequent article, Ewart pointed out that no allowance was in place for retirement.

When Ottawa appointed a fourth Queen's Bench judge in June 1884, the legal profession and the general public were indignant. The new judge, Robert Smith, Q.C., was from Stratford, Ontario.[130] Speaking for the profession, the editor of the Manitoba Law Journal wrote: "it is humiliating to be (in effect) told that out of our whole bar there is not one fit to be a judge--that Manitobans are less advanced than the natives of India, from among whom her judges are now frequently appointed."[131] Smith overcame the initial resentment toward him with hard work. He was admired for his legal ability, but the huge workload expected of him and ill-health combined to cut short his life only six months after joining the Court.[132] A few days after his death, objections were again raised against an outside appointment: "It is nothing short of an insult to our people to pass them over time after time in favor of outsiders. The Manitoba bar is as well organized and as respectable as that of any other Province."[133]

The Manitoba legal community were not to be denied again. In naming Albert C. Killam[134] to replace Justice

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See Ibid., (December 1884):185.

[130] Gibson, Substantial Justice, p. 147.

[131] 1 (July 1884):112.

[132] Manitoba Law Journal 2 (February 1885):31-32; Manitoba Free Press, 20 January 1885.

[133] Manitoba Free Press, 23 and 24 January 1885.

[134] For biography, see A.W.C.L.H., Law Society Scrapbook, November 25, 1907--December 31, 1908, p. 31.

Smith, the Prime Minister was able to satisfy the desire for a local appointment, as well as elevate a man he personally regarded as capable. In making the choice, his son, Hugh John, who was by then practicing law in Winnipeg, was a valuable conduit of information, yet appreciative of his father's necessary application of political patronage in his decision-making. A half year after first learning that Smith had been appointed, Hugh John wrote to his father and offered this assessment:

> I am glad to hear such a good account of our new judges. We want brains on the bench badly. Taylor is our only good man. Killam's appointment would have been the most popular that could have been made, but, as you say, he is a grit and has no claim of any kind on the government.[135]

On the face of it, in naming Killam early in 1885, Macdonald appeared to be departing from patronage considerations.[136] But Killam's obvious talents and the clamor for a Manitoba appointee may simply have forced Macdonald to engage in an exercise in the politically expedient rather than depart from political patronage considerations. Perhaps Macdonald understood that Killam was the kind of man that the legal leadership and opinion setters of both Manitoba and Ontario would be pleased to advance as one of their own, for shortly

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Killam's elevation to the bench and career on the Supreme Court can be followed in James G. Snell and Frederick Vaughan, _The Supreme Court of Canada History of the Institution_ (Toronto, 1985).

[135] P.A.C., MG26A, Macdonald Papers, Hugh John Macdonald to J. A. Macdonald, p. 253,190, 23 June 1884.

[136] Gibson, _Substantial Justice_, pp. 147-48 emphasizes this point.

after the appointment was announced, the editors of the Canada Law Times wrote, "Mr. Killam though educated in Ontario, belongs to the Manitoba family of lawyers and is a credit to both Provinces."[137]

Political considerations were not set aside in subsequent judicial appointments, but the notion that these would be made from among lawyers who were considered to be local talent, even though they had earlier migrated from central or Maritime Canada, became more firmly established each time an appointment was made. Acting as spokesman for the French minority in the province and also seeing an opportunity for his St. Boniface partner in law, L. A. Prud'homme, to secure a judicial sinecure, Joseph Royal wrote to the Prime Minister during the summer of 1885 to request an appointment for Prud'homme as a County Court judge.[138] To make his case, he underscored that there were many complaints about Judge Ardagh in the Eastern Judicial District, as he was allegedly not fully competent to conduct trials in French. As early as May 1885, acting on advice received from Premier Norquay, Attorney General Hamilton, Judge Ardagh, Hugh John Macdonald and Lieutenant Governor J. C. Aikins, the Prime Minister received a recommendation against the appointment of Prud'homme, but by July he had relented.[139] The realization that the creation of a French-speaking jurisdiction in the Eastern Judicial District was imperative and the dilemma that Prud'homme was the only eligible Francophone Manitoba lawyer aside from Royal, who was then a Member of Parliament, led to the rationalization that "he [Prud'homme] knows enough law for the County Court,"[140] and his appointment was confirmed.

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[137] 5 (February 1885):64.

[138] P.A.C., MG26A, Macdonald Papers, Royal to Macdonald, p. 118,269, 15 July 1885.

Although concerns over the quantity of Queen's Bench judicial work had not disappeared, the subsequent stability on the bench was interrupted only briefly in 1887 with the death of Chief Justice Wallbridge. The elevation of Mr. Justice T. W. Taylor to Chief Justice and the naming of J. F. Bain, a lawyer in Winnipeg since 1871, as puisne judge seemed to confirm that Manitobans were now receiving the recognition the leaders of the profession desired. However, the particularities of Manitoba appointments were such that not all local interests could be satisfied, as J. C. Aikins reminded John A. Macdonald: "Taylor appointment over Dubuc has raised the ire of the St. Boniface people."[141]

Occasionally the benchers of the Law Society were called upon to protect the prerogatives of law practice in Manitoba by curbing the excesses of or by disciplining the more recalcitrant among their own membership. Although permitted by a vote of the Society in 1881, the practice of allowing students under articles to operate country offices for their sponsoring Winnipeg lawyers was not unanimously condoned.[142] An editorial in the inaugural issue of the Manitoba Law Journal in 1884 emphasized that the questionable practice had not yet been abandoned.[143] While such arrangements might be considered unprofessional in nature or unfairly competitive, the lack of supervision sometimes encouraged behavior which reflected badly on the entire profession. A case of this kind was recorded in the Free Press[144] in 1881.

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[139] Ibid., Sir Alexander Campbell to Macdonald, p. 82,806, May 1885 and p. 82,894, 11 July 1885.

[140] Ibid., 11 July 1885.

[141] P.A.C., MG26A, Macdonald Papers, Aikins to Macdonald, p. 77,503, 31 October 1887.

> A lawyer named O'Brien who has been practising for some months past at Portage la Prairie, managing the branch of the business there of Messrs. Bain, Blanchard, & McColl of this city, and who had a woman with him supposed to be Mrs. O'Brien, has left for parts unknown leaving a deficit in his accounts with his principals between $2,000 and $3,000.

Avoiding embarrassment was one thing, but protecting the exclusivity of Manitoba also attracted the attention of the Society's disciplinary committee during these formative years. Directed to investigate the "subject of Attorneys transacting business for Ontario Attorneys on agency terms,"[145] the Committee discouraged members from doing so. Some years later when several prominent Winnipeg lawyers were admitted to the Bar of Minnesota while retaining memberships in the Manitoba Society, the Disciplinary Committee was again called upon to consider possible action.[146] While such combinations made good business sense to J. B. McArthur, S. C. Biggs and C. E. Hamilton, the lawyers named, the object of the Society's concern must certainly have been the issue of cross-border reciprocity in legal services and an underlying fear of an influx of American-based lawyers.

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[142] A.W.C.L.H., A2793, Law Society Minutes, 12 November 1881 indicates that benchers were clearly divided.

[143] 1 (January 1884):7; A.W.C.L.H., A2793, Law Society Minutes, 15 February 1884 indicates that four letters were sent to members informing them that their articles or partnerships were invalid, as their principal was not authorized by the Society.

[144] Manitoba Free Press, 18 February 1881.

Applying rules of membership in unusual cases could, however lead to unwanted public attention. Following his resignation from the bench in 1882, James A. Miller was admitted to the Manitoba bar in 1883. A flamboyant attention-seeker and political-lawyer, he claimed that a former judge had the right to be admitted as a "visitor" of the law society and, therefore, refused to pay admission fees. After numerous attempts to force payment, the Society finally reluctantly struck his name from the rolls on 10 October 1884.[147] Miller, however, appealed the judgment in court and the court ruled in his favor in June 1885. Its authority curtailed somewhat by this ruling, the law society in the end dispensed with the awkward matter[148] and admitted Miller. Perhaps even more awkward was the application in 1888 by former Premier John Norquay to have the provincial legislature confer upon him the status of a lawyer, thereby bypassing the normal apprenticeship route. The Benchers stood firm and opposed the request judging this approach "unfair" to the profession.[149]

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[145] A.W.C.L.H., A2793, Law Society Minutes, 15 February 1884.

[146] Ibid., 27 November 1888.

[147] Before striking a recalcitrant member of the profession from the rolls, a bylaw was introduced and read three times.

J. S. Ewart led the way in providing a necessary focus for shaping and buttressing professional attitudes and actions from within the profession. His opportunity came when the Law Society issued the first issue of the Manitoba Law Reports,[150] with Ewart as editor. The Reports, designed to collect important Manitoba decisions, represented the first opportunity for the province to attain legitimacy by exporting an aspect of its legal culture.[151] But perhaps more important, a jointly published periodical entitled Manitoba Law Journal, provided the frequently acerbic Ewart with a forum for disseminating views on acceptable professional conduct and for presenting issues as he understood them.[152]

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[148] A.W.C.L.H., 49-A692--documents relating to the striking of Hon. J. A. Miller's name from the Rolls; Re: The Hon. James A. Miller, Manitoba Reports 3 (1886):367; Manitoba Free Press, 17 February 1886.

[149] A.W.C.L.H., A2793, Law Society Minutes, 7 February 1888.

[150] A.W.C.L.H., A2793, Law Society Minutes, 21 December 1883.

[151] See G. Blaine Baker, "The Reconstitution of Upper Canadian Legal Thought in the Late Victorian Empire," Law and History Review 3 (1985):219-92.

Ewart claimed that without a law journal "to keep guard in this matter," some lawyers in Manitoba were operating outside the "limits within which a lawyer may attract public attention."[153] Ewart especially objected to the widespread practice of advertising provided through the "doubtful aid of newspaper puffs"[154] which declared the recent successes and capabilities of favored lawyers. He was also critical of advertising legal services in newspapers especially when the ad was deliberately deceiving or when it confused traditional legal competencies with other forms of agency.[155] Also occasioning comment were the large number of Q.C.'s awarded in 1884. Like advertising that could be misleading or designed to require attention, such appointments conferred the ability for some lawyers to claim they were "learned in the law," as well as a right of precedence in being called to speak in court. After four prominent Winnipeg lawyers[156] received silk, the editors offered this knowing comment:

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[152] When the Law Society decided in July 1885 to distribute the Reports to its membership free, the Journal was stillborn.

[153] Manitoba Law Journal 1 (April 1884):63.

[154] Ibid., (May 1884):79.

[155] Ibid., pp. 79-80.

[156] The four were: Fred McKenzie, Sedley Blanchard, J. B. McArthur, and A. C. Killam. Others who were named later that year included C. E. Hamilton, N. F. Hagel, Hon. S. C. Biggs, H. M. Howell, J. A. M. Aikins and John S. Ewart.

> To the disappointed let us say, that a patent of precedence, like the forgiveness of sins, comes not by merit but by grace; and that if there are two lists upon which a name may or may not be, the mathematics of probabilities are against the chance of it being upon both.[157]

Despite receiving the honor himself, Ewart had many reservations about its applicability in Canada. Tracing the roots of the custom, he found that the designation was easier to award on the basis of political affiliation than merit since the Governor General and Council who awarded the honor were rarely aware of legal abilities of the recipient nor did they have a precise criterion for measuring them. Furthermore, he thought the political method of making choices usually resulted in an "absurd and indefensible"[158] list. Calling for the abolition of the title, the editorial argued

> We object to the system because it gives one barrister a factitious importance and dignity over his fellows. If nature has endowed him with greater ability or industry, that is no reason why the Government should add to his advantages, and, if his inclinations are political rather than professional, he should look for political and not professional awards.[159]

Seeking again to influence the behavior of those who might be "transgressors of propriety"[160] Ewart used the pages of the journal to point out the short-comings of "bullying" tactics in court and other offences against decorum, concluding that most barristers would "prefer a less prominent position with the esteem and friendship of the bar and public, than leadership won by inconsiderate and indiscriminate abuse of all opponents."[161] Apparently, Chief Justice Wallbridge found it difficult to exercise discipline over several barristers appearing before him, which caused the editor to make the following cautionary pleas:

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[157] Manitoba Law Journal 1 (June 1884):96.

[158] Ibid., (December 1884):177-78.

[159] Ibid., p. 178; see also Free Press, 12 December 1884.

[160] "Rows in Court," Manitoba Law Journal 1 (May 1884):71.

> Barristers, whose manners are in other places unimpeachable, seem to forget that the rules of civility and gentlemanly demeanor are for public as well as private life, and that it is, if possible, a more gross breach of culture to shout down one who is addressing a judge than to break in upon a friends conversation. Respect must be shown for the judge as well as the one who is addressing him.[162]

Concern over the effect this kind of thing would have upon "training which our young men" were receiving was joined to a reader's concern in reply, that rules requiring attorneys to appear for trials properly attired were being ignored,[163] as the Chief Justice was not insisting upon a formality which Justice Wood had previously demanded.

Other organized opportunities to act as legal brokers inside the profession were either ceremonial or fraternal. One such ceremonial occasion took place 14 July

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[161] "Bullying Barristers," Manitoba Law Journal 1 (May 1884):67.

[162] Manitoba Law Journal 1 (April 1884):57.

[163] Ibid., (May 1884):79-80.

1882.[164] The Law Society invited all the leading citizens of Winnipeg to the Court House for the unveiling of the portrait of Chief Justice E. B. Wood, which it intended to have hang there in perpetuity. Hon. Senator Marc Girard, a lawyer, was honorary chairman and Mr. F. McKenzie, the treasurer of the Law Society, read the address which preceded the official unveiling by the commissioned artist, Mr. Bridgeman. Most of the members of the profession were represented, appropriately attired in professional costume. Several months later Wood was dead and again the legal profession gathered in numbers which emphasized their collective strength and gave a more public expression to the status that various practitioners had attained among their peers. Agreeing to wear armbands of black crepe for two weeks, in honor of the deceased Chief Justice,[165] the Society took over arrangements for the funeral.[166] With the Society in charge of the obsequies, the funeral cortege of seventy carriages reflected a marshalling order giving not unexpected prominence to the leading members of the profession. The order was as follows:

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[164] Reported in detail in the Manitoba Free Press, 15 July 1882.

[165] A.W.C.L.H., A2793, Law Society Minutes, 9 October 1882.

[166] Manitoba Free Press, 11 October 1882.

Dr. O'Donnell & Rev. A. Stunden
Rev. C. B. Pitblado

Pall Bearers		Pall Bearers
Sedley Blanchard	The Hearse	Fred McKenzie
W. B. Thibodeau		A. W. Ross, M.P.
Hugh McMahon		H. M. Howell
A. H. Gen. Sutherland		J. A. M. Aikins

Members of Law Society
Students of Law Society
Officers of Winnipeg Military District
Family of Deceased
Mr. Justice Miller & Mr. Justice Dubuc
Officers of County Court and Queen's Bench
Lt. Gov. Cauchon & Capt. Lewis
Archbishop Taché of St. Boniface
The Bishop of Rupert's Land
Hon. John Norquay & Hon. Mr. Girard
University of Manitoba, City Council
Citizens

On these and other occasions such as honorary banquets,[167] prominent legal men did not cease being lawyers nor advancing their careers.

A more routine way to meet and perhaps impress other members of the junior bar was provided during events sponsored by the Winnipeg Legal Club. The structure of the organization and the general format of the club meetings resurrected and dusted off the earlier purpose of the Law Students Society which had lapsed into desuetude. Begun by law students in February 1884, the club was designed to mirror the Osgoode Legal and Literary Society in purpose and design.[168] Meeting regularly at the court house, its inaugural meetings featured debates on the case for abolition of jury trials in civil cases and the resolution "that the learned professions be thrown open to women."[169] The decision confirmed the negative stance on the resolution. Regular literary recitations and moot courts rounded out these meetings, but in the fall they sponsored a special farewell banquet for their members who were about to join Lord Wolseley's Nile expedition.[170]

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[167] Ibid., 21 August 1882--banquet to honor Judge Walker on his elevation to the bench.

[168] Ibid., 7 and 25 February 1884.

Approving of the purposes of the Club and its program, the editor of the Manitoba Law Journal wrote, "All that young men, as a rule, require for their education in polite demeanour is the presence of a proper ideal during action."[171] The officers of the club were not nearly so sanguine that emulation and practice were all that were needed for successful elevation within the profession and they pressed both the University of Manitoba[172] and the Law Society[173] to work to establish law courses under university auspices. By the next year the Council of the University had established a three year L.L.B. degree but few intending young lawyers followed that route, preferring instead to prepare themselves using the Society's own system of self-study.[174] The far more important aspect of associational links of this kind were the necessary contacts they provided within the profession. This organization served its youthful legal brokers well. W. E. Perdue, President, for example, subsequently joined the ranks of the more prominent in his profession.

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[169] Ibid., 3 March and 7 April 1884.

[170] Ibid., 5 and 6 September 1884; see also Roy MacLaren, Canadians on the Nile, 1882-1898 (Vancouver, 1978), Ch. 5.

[171] 1 (November 1884):175.

[172] Manitoba Free Press, 1 December 1884.

[173] A.W.C.L.H., A2793, Law Society Minutes, 5 December 1884.

With much of the professional world of Manitoba lawyers still ill-defined during its first decade, aspiring lawyers who were well-placed, ambitious, readily adaptable or just plain lucky might rise to the head of their profession. Within professional circles the experiences of lawyers like Colin Campbell demonstrate that patrons and mentors, well-timed assistance or advice, and a favorable reputation won by merit and conviviality were necessary building blocks of a professional career. Further enhancing claims to prominence were such honors as election as bencher of the Society and elevation to the Bench. In both cases, the positions occupied could be employed to advance professional concerns and define the parameters of acceptable practice. In the case of lobbying the federal government for sufficient numbers of Judges and for local judicial appointments, for example, the activities of prominent lawyers came to resemble "boosterism" of the commmercial elite.[175] Necessary, although similarly self-serving, were successful appearances in court, attempts to shape the opinions of peers on professional conduct and roles played during organized gatherings of the profession. Lawyers acting as brokers, however, did not confine themselves to an internal professional world. In large part, their prominence would also depend upon the impression made in the much more public economic, political and social theatre of their legal world.

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[174] R. B. MacInnes, K.C., "Fifty Year Ago," Manitoba Bar News 7, no.6 (February 1936):85-87.

[175] See Artibise, Winnipeg A Social History, Ch. 2.

CHAPTER VII

"THE NOBLE BLUE BAG ARMY,"[1] PUBLIC BROKERS: PROMINENT MANITOBA LAWYERS, 1878-88

When Colin Campbell listed the 'duties' which he thought that a lawyer was obliged to perform to be successful in his profession, he did not differentiate between the professional interactions and activities in his career that were primarily between lawyers, and those that were with or witnessed by the general public. Nevertheless, he did give expression to the notion that the legal profession was an intensely social calling,[2] requiring constant nurturing of contacts with prospective clients, a recognized role in public life whether in politics or as an occupant of the bench, and an active participation in a myriad of community activities. As with the 'firstcomers' from the previous decade, such involvements remained important avenues of integration for emigrant lawyers starting out in Manitoba after 1878. But in Manitoba's rapidly changing socio-economic and political climate between 1878 and 1888, and against the backdrop of a rapidly growing profession, it became essential for lawyers like Campbell to be effective brokers in the public realm as well. The public realm represented a field of opportunity, which if managed purposefully, might produce the solid reputation that would sustain careers well past an accelerated and brief frontier stage.[3]

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[1] The reference to lawyers as a "Blue Bag Army" appears in the Manitoba Free Press, 2 February 1884 and suggests a stereotypical image that was well understood.

[2] Janice Dickin McGinnis, "When Lawyers were Scholars: Frank L. Burnet," Citymakers: Calgarians After the Frontier, eds. Max Foran and Sheilagh Jameson (Altona, Manitoba, 1987), p. 145 stresses this point.

In seeking out a clientele, Manitoba's lawyers in the 1880's were understandably lured by the magnet of land speculation and the accompanying fee-producing transactions which required their services. Shortly after his arrival, Colin Campbell was very critical of the rampant land speculation he witnessed all around him: "The only way money can be made in this City & country is in speculation and that as now carried on is one huge swindle."[4] Worried that involvement in this short term, although admittedly lucrative activity, would require that his rigid Presbyterian conscience "be trampled under foot," Campbell was also concerned that there would be little left for him to do compared with his previous practice in Ontario, once the speculative bubble had burst and business had settled down to a normal pattern.

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[3] That the first decade of a lawyer's career was crucial in a developing frontier urban center, is emphasized by Neil B. Watson in "Counsel for the Defence: John McKinley Cameron, K.C.," Citymakers, p. 117.

[4] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 4 February 1882.

> There is little or no litigation here for the only business for lawyers is drawing deeds mortgages etc. and in a few years a person would forget all the law they ever knew--Nor will there be much litigation for a number of years to come.[5]

Despite his misgivings about Manitoba, Campbell thought that ambitious lawyers could still build a practice very quickly in Winnipeg,[6] and he decided to stay. Devoting himself to commercial and real property law, Campbell's firm in time developed a reputation as one of the leading practices in that specialty.[7]

Though repelled by what he judged as the excesses of others in land speculation, he too was drawn into the then most active area of business for lawyers. While still working for the Aikins, Culver and Hamilton firm, he was sent on business to meet with "halfbreeds," likely to arrange scrip purchases. On one occasion he reported visiting a halfbreed hut "but found there wasn't a soul of them that could talk English," but they "got an interpreter" and he was able to complete his business without incident.[8] Campbell also acted as a go-between for acquaintances in Ontario wishing to take advantage of the Winnipeg land boom.[9] For example, he acted on behalf of his future father-in-law, Anson Buck, M.D. of Palermo, Ontario who wrote:

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[5] Ibid.

[6] Ibid., 11 February 1882.

[7] Newspaper Reference Book of Canada, Sketches of Representative Canadian Men (Toronto, 1903). p. 131.

[8] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 28 March 1882.

[9] P.A.M., MG14 B21, Colin Campbell Papers, Box #1,

> I have written Rev'd Wm. Argue and enclosed a cheque for $850.00 dollars to complete the purchase of . . . serviced street lots. I telegraphed him that I would pay the whole amount at once . . . provided the title was O.K. Will you call on Mr. Argue and assist him in seeing that it is all right.[10]

Actively involved in buying properties in Winnipeg, Campbell's father-in-law relied upon Colin to examine title deeds in the Registry Office, sometimes, unfortunately, after initial commitments had already been made. In a thankful tone, Buck wrote, "I am indebted to you for expenses incurred in examining the title . . . . You say that I had better try and get out of the affair."[11] Campbell was also called upon to play the role of financial advisor, and to predict the course of the market: "What are the prospects in Winnipeg? . . . Will my . . . lots increase in Value? or did I pay too much for them?"[12] Campbell's initial misgivings that his ideal of a law practice based mainly upon litigation was antithetical to the land speculation business, was soon overshadowed by the realization that his expertise in real property law, combined with wise speculation in land, were the chief

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W. S. Campbell, Treasurer, County of Brant to Campbell, 27 March and 14 April 1882.

[10] Ibid., A. Buck to Campbell, 13 April and 5 May 1882.

[11] Ibid., 30 May 1882.

[12] Ibid.

constituents of the prosperity he sought.

While the boom lasted, fees collected by legal firms were substantial. For example, George W. Baker, employed by the firm of Walker and Andrews, reported the gross earnings of that firm for fees alone over nine days was well over $400.[13] Lawyer A. W. Ross, however, was interested in far more than the fees involved in moving land, and by the height of the land boom had become one of Manitoba's most important land marketers. In the spring of 1882 an advertisement for his land office appeared in the Free Press offering well over 300 separate parcels of rural land alone, ranging in size from 160 to 640 acres.[14] Established in his own firm when the boom ended, Campbell's work consisted largely of sorting out real estate transactions gone bad, including some of his own. He explained to Minnie: "Why was I dejected? Well real estate mortgages are principal cause. The complications are very bad--I am happy to say that I am much less than many others and hope in the . . . future to be on my feet again."[15]

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[13] P.A.M., MG14 B2, G. W. Baker Papers, Diary, 1881-1882, p, 7.

[14] 6 March 1882. A. W. Ross may have been closely associated with Colin Campbell, which seems reasonable, given Campbell's concentration on property law. However, without a record of fees charged to clients, it is difficult to confirm such linkages. Records of court appearances offer only a partial answer as well, as only a small portion of transactions performed for clients necessitated recourse to the courts.

[15] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 1 March 1883.

A. W. Ross was a casualty of the collapse of the real estate boom. A dejected Campbell reported in 1883 that things looked "very blue."[16] He had managed to shield himself from the worst effects, however, because he had previously secured the solicitorship of a Hamilton-based loan company with the assistance of his mentor and patron, Mr. Hoskin.[17] Apparently a Winnipeg lawyer, Beverley Robertson, had already been retained by the Hamilton loan company, but with the assistance of his associates in Ontario, Campbell managed to get the company's Board to award their business to him instead. In a community over-supplied with lawyers, Campbell did not intend to be a casualty of increased competition. He described to Minnie the petulant behavior of the lawyer whose business he had just landed: "Robertson the old Solicitor of that Company is quite wrathy (?) over my appointment and is going to write the directors about it and until he hears from them won't hand over the papers."[18] If Robertson carried the threat any further, Campbell made no mention of it.

Campbell's workload for the recently netted client expanded greatly. While in Emerson the following month to cancel "some homestead claims . . . on behalf of the Loan Company," Campbell reported that the next day he was to "have a 14 mile drive out amongst the halfbreeds," having already declined the offer of his mixed blood driver that he stay overnight, claiming "I cannot say I would relish a night amongst them."[19] Campbell was obviously pleased with his mortgage company client and retainer, and furthermore "to have such a large number of Mtgrs to look after,"[20] which he estimated to be valued from "$150,000 to $200,000."[21] While Campbell no doubt was delighted with having successfully seized the retainer of another lawyer, he too had to be on guard against interference with his own clients, as he explained:

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[16] Ibid.

[17] Ibid., 6 and 28 January 1883.

[18] Ibid., 3 February 1883.

> For a long time past we have been doing Sanford bail & Co's business of Hamilton they have a branch establishment here and McRiley the manager here gave me their business and when Mr. Sanford was up, JAM Aikins spoke to him about it. Wasn't it mean of him? Well Mr. Sanford refused to interfere with his manager and we retain the business.[22]

In addition to handling the business of Winnipeg branches of Hamilton firms, Campbell was elated to have established a Montreal connection as well. Campbell explained:

> Last week we also secured the Solicitorship of an Insurance Co: The Citizens of Montreal. It will not give much business but it gives a good Montreal Connection thus enabling us to have a hold should anything arise in Montreal we might use it.[23]

In addition to the work gained from solicitorships of mortgage and insurance companies, Colin wrote excitedly two months later that "I am an awfully pleased boy tonight . . . today we got the Solicitorship of a New Railway Co. The Souris & Rocky Mountain."[24]

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[19] Ibid., 21 March 1883.

[20] Ibid., 9 June 1883.

[21] Ibid., 13 June 1883.

[22] Ibid., 9 June 1883.

[23] Ibid.

Since banking services were not yet fully developed and the specific roles of financial institutions were not clearly delineated,[25] lawyers in Winnipeg sometimes stepped in to act as investment counsellors and brokers. Writing of a bachelor acquaintance and rowing partner, Colonel Gracey, whom Campbell described as "a real firm military gentleman with lots of money and full of pull," he reported that "I have been investing some moneys for him."[26] While it is not clear whether the money invested for Gracey was involved, Colin was much less enthusiastic about this kind of venture a half year later, sobered considerably by an obviously bad experience. From that point on he vowed that "a cardinal principle of my legal life will be that I will never invest other people's money except when mortgage securities to be approved of and held by themselves." He continued,

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[24] Ibid., 1 September 1883. For background on the nature of railway promotion and politics during this period, see James A. Jackson, "The Disallowance of Manitoba Railway Legislation in the 1880's: Railway Policy as a Factor in the Relations of Manitoba with the Dominion, 1878-1888" (M.A. thesis, University of Manitoba, 1945) and T. D. Regehr, "The National Policy and Manitoba Railway Legislation 1879-1888" (M.A. thesis, Carleton University, 1963).

[25] Michael Bliss, Northern Enterprise Five Centuries of Canadian Business (Toronto, 1987), ch. 10 provides a useful overview of the growth and development of financial services at this time.

[26] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 14 April 1883.

> The worst lesson I have had in my life was investing in speculation for another and though no one is to blame nor blamed yet it has taught me such a lesson that I will never forget it--my motion is lawyers stick to your briefs and leave speculation for the people alone.[27]

Recognizing that the prominence and economic security he sought rested partly upon joining the select groups of lawyers who practiced regularly in the courts, Campbell devoted increasing attention to his briefs.[28] Anticipating a case which was coming up for trial, Campbell was anxious about the outcome and gratified to be joining several prominent litigationists: "I do hope we are successful," he wrote, as "it involves about $4,000." Campbell, along with H. M. Howell and Macdonald (probably P. A.), acting for the plaintiffs in the action, faced Hugh McMahon, J. D. Cameron and J. D. Cumberland. Having combined talents across firm lines, Campbell noted that "If we win it will be quite a victory," but he expressed reservations about the doubtful nature of the law, noting that "Mr. Howell thinks we are 'OK' but am afraid he has not carefully considered."[29] In September court was again in session, with Campbell proudly reporting to Minnie that "next week the argument of that very long wheat case comes on for argument and Mr. Howell Senior Counsel on Wednesday evening when going over the case said to me well you are to take the evidence & question of warranty."[30] Already holding several other briefs, Colin announced enthusiastically that he was about to begin working on "a big suit against the City of Brandon in which we were retained today . . . ."[31] In this case and in others, of course, Campbell worked together with his new partners, F. Beverley Robertson and Horace E. Crawford.[32] The important litigation Campbell had hoped to concentrate on when he first arrived in Winnipeg was fast becoming a reality.

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[27] Ibid., 13 October 1883.

[28] A similar process of selection is described in Williams, Duff, p. 25, although the venue is Victoria, British Columbia in the 1890's.

[29] P.A.M., MG14 C6, Minnie Campbell Papers, Box#1, Colin to Minnie, 28 April 1883.

Several days later there was more good news, as Campbell, who was looking forward to being able to offer Minnie a substantial matrimonial home and a fiancé with recognized status, could barely contain his joy. "I found a letter from Mr. MacDonald giving me a retainer in all his cases at the Brandon assizes then I was elated it was like New life what I have been looking forward to." Gaining a reputation among other lawyers for his expertise and abilities, Campbell knew that in obtaining these retainers he was in fact the beneficiary of a professional referral. It meant that in the future if all went well, not all potential clients would have to be sought after. Recognizing that he was succeeding where so many other aspiring lawyers were not, he wrote, "so few of the Junior bar ever get such calls that I appreciate it very highly . . . . Oh! my dear how much I have to be thankful for."[33] As thankful as he was for the business, Campbell nonetheless experienced the jitters as he began his first ten day stay in Brandon. "Am quaking for the Brandon Assizes there are a number of important cases and I am inexperienced. Oh! I do wish I was a better lawyer."[34]

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[30] Ibid., 8 September 1883.

[31] Ibid., 29 September 1883.

[32] Ibid., 6 October 1883.

Although suffering the minor setbacks to be expected in any new firm, the partnership with Robertson and Crawford was working out. Many of the court appearances Campbell made were routine and involved debt collection matters. An executive for the mortgage company Campbell represented expected action: "There are a good many mortgages in default for interest. This I do not like and you can understand how people at a distance feel uncomfortable over investments made so far away." Perhaps alluding to the mounting costliness of their retainer of the Campbell firm, he wrote, "it seems as if there was to be a profitable crop of litigation with Loans in Manitoba," adding that "this is not as it should be."[35] Early in 1884, Campbell claimed "we have had several very important suits in which the firm won," adding that it would "be quite a feather in firms

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[33] Ibid., 13 October 1883.

[34] Ibid., 19 October 1883.

[35] P.A.M., MG14 B21, Colin Campbell Papers, Box #1, John Waldie to Colin Campbell, 26 January 1884.

[sic] cap."[36] An additional feather in the firm's cap came several months later when Campbell was again preparing for a Brandon appearance. Assembling papers "re: timber limits and logs and mills in Shell River & near Brandon," Colin boasted, "we act for the famous Peter McLaren who figured so prominently in the Stream Bill etc. This is a very great matter."[37] While achieving greater recognition by handling important cases, the firm also handled cases which it considered trivial. Campbell revealed his attitude towards such cases: "This week has seen a deluge of lady Clients (there is not much money in them largely sympathy cases) one a Yankee lady I tell you what She is a 'terror' business from the word go must understand every thing the whys & wherefores."[38]

Having married in the summer of 1884, Campbell no longer wrote to Minnie as frequently. His letters to her during the summer months when she regularly returned to Ontario while he stayed on in Winnipeg to attend to business, reveal that the firm continued to garner the attractive fees of substantial clients based outside Winnipeg.[39] Campbell kept his lines of communication open westward as well. A lawyer friend who had practiced briefly in Winnipeg before moving to Victoria, Ernest Bodwell, kept Colin informed of business opportunities at the coast.

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[36] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 19 January 1884.

[37] Ibid., 18 April 1884.

[38] Ibid., Box #2, Colin to Minnie, 19 June 1886.

[39] Ibid., 31 July 1886. In this letter he reported winning in two difficult cases, one for the Acme Silver Co. of Toronto and the other for the Bank of Hamilton.

> I haven't struck the gold mine yet but I am keeping my eyes open and I will let you know . . . . Really Colin I wish you were here and as soon as I get matters going well I am going to make you an offer. I expect that there will be a good deal of business spring up in the next years.

Not disguising part of his motive, Bodwell added,

> I believe if you induce that Loan Co. of yours to start a branch out here that it would pay them. There is no such company in the country. The people are financially sound, and I believe that a first class business could be worked up.[40]

While the influence of Campbell's firm did not extend as far as Victoria, it, like other major Winnipeg firms, handled legal matters beyond Manitoba's western boundary. Campbell wrote to Minnie in the summer of 1888 from Port Arthur, "you will see we have won those important Regina cases for John MacDonald & the other wholesale houses. It is a good thing for us."[41] Winnipeg wholesale houses, it appears, were not the only branches of Winnipeg's commercial community seeking to establish a measure of hegemony in the North West Territories at this time, as lawyers also sought to have influence in the courts of the North West Territories.

Colin Campbell's efforts to establish an economically viable practice during his first six years in the province were rewarded, as his firm became one of the most prominent in Winnipeg. By tracing the events of his career which he regarded as significant, a pattern is revealed. After arriving in Manitoba he emphasized land speculation and conveyancing, but Campbell was subsequently to bear the weight of the real estate boom collapse by securing sufficient solicitorships for mortgage, loan, insurance and railway companies to sustain his practice through a difficult time. By acting as an agent for collections, information and sometimes triumphantly succeeding in necessary litigation for his clients, Colin produced more of the kinds of clients and cases he had first sought in Manitoba.

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[40] P.A.M., MG14 B21, Colin Campbell Papers, Box #1, Ernest Bodwell to Campbell, 29 January 1885.

[41] P.A.M., MG14 C6, Minnie Campbell Papers, Box #2, Colin to Minnie, 16 July 1888.

With a growing reputation, established contacts and some surplus capital of his own, Campbell had by 1888 begun a private banking venture. With his law partner, Horace Crawford, and William Cowan as company manager, a three-way private banking partnership was formed under the firm name of Cowan & Co. Remaining silent partners, Campbell and Crawford each contributed $3,000 towards the initial capitalization. In addition to lending funds to customers not serviced locally by branches of a chartered bank, the firm's office in Boissevain was to act on a commission basis for fire and life assurance firms. The law business was deliberately separated from the company in order not to jeopardize the law practice in any way, and it was intended that as "soon as practicable," the partnership would become a joint-stock company "for the purpose of limiting the liability" of shareholders.[42]

While other successful lawyers may have enjoyed pecuniary advantages not enjoyed by Campbell, they also built their practices employing the same basic strategies which were designed to respond to the rapidly changing needs of an agricultural-mercantile-service economy.[43] Until the land boom was finished, lawyers advertised conveyancing services, the availability of money to loan on mortgages and real estate agency services.[44] Shortly afterward, most prominent lawyers became much more discreet about indicating their expertise and separated advertising of their law office from their other financial involvements. However, there were exceptions, such as Andrew Lemon, a lawyer of limited renown, whose legal card boldly proclaimed "30 years experience of railway and building contracts." For most, however, avoiding any semblance to pettifoggery in their legal dealings was becoming a standard by the latter half of the decade.

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[42] P.A.M., MG14 B21, Colin Campbell Papers, Box #1, Articles of Partnership, Cowan & Co., 19 November 1888. The business was moved to Brandon in 1891 (Ibid., 21 September 1891).

[43] After an earlier boom in California, the pattern of lawyer responses to the centripetal pull of San Francisco and its largely agricultural-mercantile-service economy was remarkably similar to the sequence of lawyer responses to the circumstances attendant in Manitoba during the 1880's. See Gordon Morris Bakken, "Industrialization and the Nineteenth-Century California Bar," The New High Priests.

[44] Manitoba Free Press, 1880-1886, legal cards and advertisements for financial services.

Even before the boom in urban lots began, some Winnipeg lawyers had been actively involved in real estate transactions. For example, in 1880 the firm of Ross, Killam & Haggart purchased 31 1/2 acres on the south side of the Assiniboine, opposite Armstrong's Point for $9,457.[45] Two years later, with values appreciated, lawyer-turned-real-estate man, A. W. Ross was reported to have sold twenty lots at Fort Rouge, opposite Armstrong's Point, for $1,000 each.[46] Entrepreneurship in land was not restricted to businessmen nor did lawyers confine themselves to law, as long as lucrative opportunities beckoned.[47]

Leading lawyers, in addition to arranging real estate transactions, formed partnerships with an eye to the quality of solicitorships each member was able to attract. For example, an early associate of Campbell's, J. A. M. Aikins, while reportedly a difficult partner, was an attractive associate, as he benefited from his father's connections with the federal Conservative party. Having acquired government lands in the West, his father, Senator J. C. Aikins, formed The Manitoba & North-West Loan Company, which in 1881 was reported to be capitalized at a hefty

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[45] Ibid., 16 December 1880.

[46] Ibid., 6 January 1882.

[47] For an example of a merchant politician involved in land transactions, see Joseph A. Hilts, "Land Agent, Promoter, Politician and Farmer: Thomas Greenway in Manitoba, 1878-1908," Prairie Forum 1 (November 1976):111-21.

$2,000,000.[48] Aikins' firm, of course, handled the legal needs of the loan company[49] and those of many other clients including the CPR, while the financial services provided by the loan company no doubt generated income for the law practice. In the 1880's the Aikins firm set the standard throughout the province by which other firms measured themselves. Besides possessing influential clients and many lucrative financial interests, the firm displayed the accoutrements of success that were the envy of rivals. After experiencing a fire in their previous offices, the Free Press reported in the fall of 1882 that

> Aikins, Culver & Hamilton have entered into occupation of their new quarters in the resuscitated Imperial Bank block, and when fully furnished will be as complete and commodious a suite of rooms as can be found in the city. There is a fireproof vault in the east end or rear portion of the building, and a law library is in an adjoining room. A new departure is made in the putting up of a special compartment for Mr. Long the accountant and cashier. The senior member of the firm will have private rooms elegantly furnished . . . .[50]

In time Campbell's firm would also become a serious contender for such visible preeminence in Manitoba's legal life.

During their first decade of organized professional life in Manitoba, lawyers made a significant impression upon the general public and their clients alike through their involvement in land transactions or in litigation arising from rights in land. Land was the common denominator of experience which most often brought lawyers and laymen together. In late September 1883, the organizational meeting of the Manitoba Land Law Amendment Association set in motion efforts to pressure the provincial government to alter the cumbersome system of land registration in place in the province.[51] Chaired by Mayor Alexander McMicken of Winnipeg, the gathering elected Charles Brydges,[52] Hudson's Bay Company Land Commissioner, as president and selected two lawyers, J. S. Ewart and A. C. Killam, as directors. The public need for a more satisfactory system provided lawyers with a ready-made opportunity to exercise their skills as brokers and agents. The land system which was in place had been established by statute shortly after Manitoba became a province and was based upon the then normal practices of English real property law. According to Edwin Pridham, under the Registry Act which was exclusively in operation until 1885, "any dealing with a title" necessitated "an investigation of every document, deed, mortgage, passage by devolution on death of an owner, or by legal process, back to the grant from the Crown." This procedure was complicated further by the fact that there was "no obligation to register documents" which might be "retained by an owner in his own depository," thus subjecting them to complete loss, disappearance or falsification.[53] Should a "cloud on title" appear on the title abstract at the Registry Office, it could take a court action to remove it before a land transfer could be finalized. Because of this, a bill for legal fees for smaller land transactions was often disproportionately large in comparison to the value of the land involved. Also, under unfavorable conditions the uncertainty produced by this approach resulted in litigation which provided lawyers with a profitable source of income.[54]

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[48] David R. M. Jackson, "Sir James A. M. Aikins (1851-1929) Lieutenant Governor of Manitoba," unpublished paper prepared for Historic Resources Branch, Manitoba, August 1980, p. 2; Manitoba Free Press, 9 November 1881.

[49] P.A.M., P485, Sir James Aikins Correspondence, letters between J. A. Aikins and G. A. Muttlebury, Manager of the Company, 14, 20 and 31 March, 4 and 7 April, 3 May and 9 August 1879.

[50] 14 September 1882. During the decade well-equipped law offices in Winnipeg came to include telephones. See Campbell's office letterhead, P.A.M., MG14 C6, Minnie Campbell Papers, Box #2, Colin to Minnie, 21 July 1888.

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[51] Manitoba Free Press, 29 September 1883.

[52] See Shirlee E. Smith, "A Desire to Worry Me Out: Donald Smith Plots the Downfall of an Old Enemy," The Beaver (December 1987, January 1988):4-11; J. S. Galbraith, "Land Policies of the Hudson's Bay Company, 1870-1913," Canadian Historical Review 32 (March 1951):1-21.

Describing the old system as "a relic of Feudalism," newspapers reflected the popular notion that lawyers were the only ones to benefit by a "system which permits robbery"[55] and which was preserved largely for their benefit. But lawyers were not opposed to improvements in the system, as alleged.[56] Delays caused by an inefficient system of land registry acted as a restraint upon the commercial life of the community, a fact which lawyers understood very well. In an article urging the adoption of the much simpler Torrens system, J. S. Ewart wrote: "It is not merely those who own land who are benefitted [sic], but also the large class which in various ways of business is concerned in transactions with landowners."[57]

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[53] Edwin A. Pridham, "The Title to Land in Manitoba," H.S.S.M. Transactions, ser. 3, no. 13 (1958):12.

[54] Gordon Bakken, "Industrialization and the Nineteenth-Century California Bar," p. 135.

[55] Manitoba Free Press, 12 January 1885.

[56] Ibid., 13 January 1885. See the unsigned editorial re: land transfers. It was likely authored by a lawyer.

The system which Manitoba adopted in July 1885 was the invention of Sir Robert Torrens, an Australian, who adapted a system first used to record ship ownership, for recording land titles. In practice, the title to the land was registered instead of the evidence of such a title. Title to real property was afterwards guaranteed by an authoritative public record of certificates under the Manitoba Real Property Act and undergirded by an insurance fund designed to indemnify those harmed by any error made in The Land Titles Offices.[58] The earlier system of registry continued alongside the new, but before long the Torrens system dominated outside of the older established areas and was popular with both lawyers and laymen. Simple, uniform and less expensive, the system reduced the "dangers due to faulty or careless conveyancing" because of "the maintenance of a legal staff" in the Land Titles Office.[59] The influence of prominent lawyers was not diminished by the operation of the Act, for under its terms the first two officers were J. A. Miller, a former judge and Attorney-General, as Registrar-General and Felix Chenier, one of the 'firstcomers,' as Examiner of Titles.

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[57] John S. Ewart, "The Torrens System," Manitoba Law Journal 1 (1884):39; The Canada Law Journal 24 (December 1888):610-11.

[58] Pridham, "The Title to Land in Manitoba," pp. 20-21.

[59] Ibid., p. 20.

As solicitors to municipalities, lawyers were well-placed to both profit from and effect change in the way local governments arranged their affairs. While this was true for both rural and urban municipalities, the place of several prominent lawyers in the unfolding events of Winnipeg municipal affairs is illustrative. In the aftermath of Winnipeg's land boom and rapid urban expansion, the administration of the city was chaotic and mainly in the hands of distillers and land speculators.[60] Early in 1884 it was revealed that the city was bankrupt and it was forced to raise funds by selling debentures in order to meet its expenses. An audit which followed uncovered faulty bookkeeping practices, a system of appropriations which encouraged corrupt expenditures for public works, and above-average salary payments to appointed officials. An additional storm of controversy arose when it was revealed that the alderman heading up the finance committee, George M. Wilson, had misappropriated money by making personal loans from a 'Sinking Fund' set aside for safe investments to be used to pay off the city's debenture obligations. Another primary beneficiary of the unauthorized disbursements was the City Solicitor, Edward Martin Wood, son of the former Chief Justice, to whom Wilson owed money. Wood received illegal loans and fraudulently employed methods of bookkeeping which did not separate city work from his private cases. According to David Spector, to "prepare a loan from the Sinking Fund, Wood wrote out the mortgage, located the title and drew up the requisition for the amount" and the "city received no certificate of title for the advance and the Finance Committee had no means of checking disbursements" so that in practice, Wood used the city's money as his own.[61] Unable to determine fully the extent of Wood's frauds and embezzlements, though they were substantial when revealed in August, he was suspended by City Council for unprofessional behavior.[62] His subsequent resignation and flight to the United States prevented action on a warrant drawn for his arrest in September.[63] Wood, it appears, had also been using his control of the fund to make bad loans of dubious propriety to other lawyers. Samuel C. Biggs, a 'firstcomer,' was Wood's law partner when he received a $10,000 loan and a later $20,000 loan from the

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[60] David Spector, "The 1884 Financial Scandals and the Establishment of Business Government in Winnipeg," Prairie Forum 2, no. 2 (1977):167. Only one member of the Council was a lawyer--he was William F. McCreary, who chaired the property and license committee. Artibise, Winnipeg: A Social History has three helpful tables on pages 24 and 26 which indicate the occupational makeup of the city's government.

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[61] "The 1884 Financial Scandals," p. 170.

[62] Manitoba Free Press, 26 August 1884. It was later disclosed that he embezzled $150,000 from the city in December 1882. Winnipeg Daily Times, 11 September 1884.

[63] Manitoba Free Press, 9 September 1884.

'Sinking Fund,' while H. J. Clarke, former premier, received $12,000. In neither case were they willing to pay back the loans without court action being taken.[64]

The entire affair would have offended men like Colin Campbell or J. S. Ewart, as it surely damaged the reputation of the profession generally, but the press blamed the problems on the City Council.[65] To wrest control of the Council from the hands of the incumbent incompetent managers of city affairs, a Citizen's ticket was nominated by the Board of Trade and supported by the Free Press in the subsequent election. A rational choice for the mayoralty candidate was Charles E. Hamilton, a lawyer and the junior law partner in James A. M. Aikins' firm. By December the Citizen's ticket had successfully elected its slate and Hamilton was installed as mayor. Representatives of the city's commercial trade had firmly taken control of the Council and they immediately took steps to organize a bookkeeping system free from the previous financial irregularities, and launched a complete inquiry into the state of the City's funds and properties. Three trustees, including the mayor, were chosen to administer the 'Sinking Fund.' The reforms they implemented were not matched by much success in recovering moneys loaned to G. M. Wilson, H. J. Clarke and E. M. Wood, although Samuel C. Biggs did arrange for the repayment of his mortgage and began repayment after being threatened with confiscation of his property.[66] As David Spector points out, "Business government had arrived."[67]

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[64] "The 1884 Financial Scandals," p. 171.

[65] Winnipeg Siftings, 13 September 1884.

Having vacated the city solicitorship under the cloud of a scandal, E. M. Wood's hasty departure left a position to fill. Calls for reform followed. When the old Council selected another lawyer, Mr. David Glass, the _Free Press_ announced that "there is a very general want of confidence amongst our citizens,"[68] pointing out that the person selected should be a professional of unreproachable reputation. Furthermore, the setting of an adequate salary was urged in order to avoid tempting the solicitor "to manufacture occasions for charging extra fees."[69] The problem was apparently real, as the solicitor received a basic retainer of $1,600, raised to $2,400 in July 1885, and pocketed the costs taxed in all cases won by him, with the city paying the costs when he lost.[70] Perhaps more troubling was the situation which arose in early 1885. The lawyer-mayor of Winnipeg, Charles E. Hamilton, was also chosen Attorney-General of the province. One observer complained that the remuneration he would receive was both inappropriate and excessive:

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[66] "The 1884 Financial Scandals," pp. 174-75.

[67] Ibid., p. 174.

[68] _Manitoba Free Press_, 26 September 1884.

[69] Ibid., 29 September 1884.

[70] _Manitoba Free Press_, 8 July 1885.

> As Attorney-General he gets $3,000 per annum; as a member of the House he gets $600; and as Mayor he will get certainly not less than his predecessors, $1,000 and may get $1,500; as Police Commissioner about $400 more, or a total of $5,000 as Mayor and Attorney-General. In addition he has his salary as secretary of the Manitoba Northwestern Railway and the grand opportunity of aiding his firm by holding these special positions.[71]

The salary derived from these many positions was not a small consideration nor were the concerns about the propriety of holding several positions of potential conflict of interest easily dismissed.

A recognized role in the public life of the province was also an essential aspect of winning prominence in the profession. While he kept up a lively interest in national politics, Colin Campbell, a confessed Conservative, found the political climate of Manitoba dull. "Every thing promises for an Election within two months I should very much like to be in Ontario and enjoy the fun--it is too one-sided here (tory) and politics do not disturb our peaceful minds to any great extent."[72] Despite his desire to enjoy the cut and thrust of partisan politics Ontario-style, privately Campbell thought that the blind adherence to party lines condemned Canada to a reduced stature.[73] Campbell explained: "If only Canadians could be lifted out of the mire of party lines and think of Canada and Canada alone." Noting that for a Tory to speak this way was probably treasonous, he asked rhetorically,

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[71] Ibid., 13 February 1885.

[72] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 13 May 1882.

[73] The developing view that partisanship prevented Canada from realizing its potential is explored in John English, The Decline of Politics The Conservatives and the Party System 1901-20 (Toronto, 1977).

> What right have we to be simply a dependent Colony. Why not strike out alone and become a nation--it is only want of confidence prevents us and the sooner we learn that it is not well for us to be tied to the strings of old fashioned aristocratic England the better for us.[74]

Campbell was a nationalist before an imperialist.[75] If anything, his rigid Presbyterianism caused him to take a superior attitude towards local Conservative politics but he did not fail to keep his contacts alive. "Last night I attended the Conservative banquet . . . and I went away thoroughly disgusted to see into whose hands the guidance of that party in this province had fallen."[76] On another occasion his letter indicated that his allegiances were being pulled in opposite directions:

> Tell your father I have gone back on the National Policy for Manitoba but not for Ontario of late meetings have been held to form a new party or rather an association irrespective of party for the redress of Manitoba grievances C.P.R. monopoly Land Laws & N.P. as it affects implements & machinery the association is pretty well underway and I have said I would join but unless there is less swearing etc. I will not attend any more of the meetings.[77]

Keeping his political contacts alive in the province included cultivating a warm relationship on a social level with the province's first and most prominent Conservative family, the Norquays. While Minnie was again away on a summer holiday, Campbell wrote, "I winded my way homeward and going by Norquays they called me in and I passed a most pleasant evening with Hon. John and Mrs. N. Miss Bella and Miss Nellie playing cribbage . . . ."[78] The next month he reported playing "lawn tennis" at the Norquays and several evenings later he "played cards with Hon. John," observing that he "is very busy with all his political meetings and I think he is heartily sick of political life & its worries."[79] Campbell was of course not simply seeking the company of a kindred spirit but was hoping for political gain. Appreciative of her role in fulfilling his aspirations, Colin wrote to Minnie, "you are very popular with the Norquays. Mrs. Campbell takes the cake with them especially the Hon. John and I think it is a good idea as I intend to ask him for some political favors on my return and that will be a good leverage."[80] While not directly involved in political life himself at this point, Campbell understood, as did most successful lawyers, that being an effective broker in public life was essential for advancing one's career.

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[74] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 24 June 1882.

[75] The best study of contemporary imperialist thought is Carl Berger, The Sense of Power Studies in the Ideas of Canadian Imperialism 1867-1914 (Toronto, 1970).

[76] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 21 October 1882.

[77] Ibid., 24 November 1883.

For Hugh John Macdonald, a fellow Conservative who had arrived in Winnipeg at the same time as Campbell and who was the Prime Minister's son,[81] involvement in political life was unavoidable. In legal partnership with Stewart Tupper, a scion of another prominent Conservative family whose father, Charles Tupper, dispersed political favors expecting in return to place his sons in substantial positions,[82] Macdonald became involved with the local Conservative association. As a loyal agent for his father, he transmitted information to Ottawa but was understandably very uncomfortable with the provincial agitation of fellow Conservatives over the "disallowance" question. Nevertheless, by the end of the decade he too was sympathetic with the provincial position which called for abolition of the CPR monopoly clause and the construction of branch lines to meet the needs of Manitoba's growing population and economy.[83]

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[78] Ibid., Box # 2, Colin to Minnie, n.d. June 1886.

[79] Ibid., 20 and 24 July 1886.

[80] Ibid., 27 July 1886.

Other members of Manitoba's developing legal community preferred to attach their fortunes to the Liberal party. Called to the Manitoba bar in 1882, Clifford Sifton moved to Brandon from Winnipeg at the age of 21 to be closer to his father John, a driving force in Brandon politics, and his brother Arthur, who though not yet a full-fledged member of the bar, was at the time managing a law office for the

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[81] Henry James Guest, "The Old Man's Son--Sir Hugh John Macdonald," H.S.S.M. Transactions, ser. 3, no. 29 (1972-73):51-53.

[82] P. B. Waite, Man From Halifax, p. 105.

[83] Guest, "The Old Man's Son," p. 53.

Monkman firm of Winnipeg. According to Sifton's biographer,[84] Clifford and his brother, who joined him in practice in 1883, regarded the practice of law as but a "stepping stone" to a political career.[85] Joining in the provincial rights agitation, the members of the Sifton family were 'insiders' as the provincial Liberal party's wing in Brandon began to coalesce. Unable to realize his political aspirations immediately, Clifford turned to the only kind of legal work available to lawyers in a vicinity dominated by an Ontarian rural majority. Land law, speculation and offering money for loans on mortgages rounded out his financial activities. With other Liberals, he soon held stock in the Brandon Sun, and became an active editorialist with a ready forum in its columns for his political views.

Early in 1885, led by prominent lawyers James Fisher and F. C. Wade, president and secretary respectively, Winnipeg Liberals created the first permanent provincial party organization. Shortly afterwards, Brandon Liberals, who were not always in tune with the Winnipeg clique, elected Sifton vice-president of the local Brandon Liberal organization. As newcomers to the law in the 1880's, young men like Sifton deliberately prepared the circumstances for their plunge into provincial or national politics by demonstrating their abilities in the appropriate organizations which were political in organization and aims, excepting perhaps the denominational church they belonged to.[86] Campaigning for his father and other local Liberals seasoned Clifford for his entry into the political arena in May 1888.[87] His Conservative opponent was a Portage la Prairie lawyer, W. A. Macdonald, a close friend of Colin Campbell. It would be several years before Campbell was prepared to become a lawyer-politician and run for provincial political office, but in 1888 young Clifford Sifton had already won a seat in the provincial legislature, which served to launch his subsequent career in the Liberal cabinets of the Greenway government of Manitoba and the Laurier government in Ottawa. Few Manitoba lawyers would achieve the political heights to which Sifton rose, but in laying the groundwork for political involvement during the 1880's, the activities of many lawyers in Manitoba as political brokers bore a similarity to those of young Sifton.

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[84] D. J. Hall, Clifford Sifton, 2 vols. (Vancouver, 1981), vol.1: The Young Napoleon 1861-1900, ch. 2.

[85] J. R. Mallory, "The Lawyer in Politics," Dalhousie Review 30 (October 1950):229-36 provides an overview of the reasons why lawyers are particularly drawn to politics.

Of course direct political party involvement was not the choice of all prominent lawyers. J. S. Ewart, for example, was in partnership with James Fisher, president of the Winnipeg Liberal Association, who on one occasion boldly attempted to usurp the party leadership from Thomas Greenway.[88] Yet Ewart remained largely aloof from Liberal politics. His sympathies were Liberal but his actions were mostly nonpartisan. Nevertheless, the firm of Ewart, Fisher and Wilson handled legal matters for Greenway after he became Liberal premier in 1888 and Ewart enjoyed a fairly intimate relationship with the premier.[89] His reasons for eschewing direct political action are revealed in a letter by his son, T. Seaton Ewart, many years later:

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[86] D. J. Hall, Clifford Sifton, vol.1, p. 23.

[87] Brandon Sun, 24 and 31 May 1888.

[88] D. J. Hall, Clifford Sifton, vol.1, p. 29.

> My father was not cut out for a politician and had quite enough sense to know it after a very short experience. In his early days, possibly to assist him in his practice as lawyer, he was a member of the Liberal Party, but he lasted only a short time. After that he was completely independent and told me he had not voted at all in some elections, as he disapproved of both parties.[90]

If political activity did not attract Ewart, he was able to compensate for this through his political "brokering" activities in other areas.

Other prominent lawyers, sensing that winning political office offered an achievable route to prominence, decided to stand for political office. While the benefits of political life could be attractive, frequently the candidate, especially if he was a neophyte, found that public exposure included trenchant criticisms. For example, when Nathaniel F. Hagel[91] made his debut as the Norquay candidate for the constituency of Rockwood in July 1886, one local newspaper editorialized that

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[89] W. T. Shaw, "The Role of John S. Ewart in the Manitoba School Question" (M.A. thesis, University of Manitoba, 1959), pp. 8-9.

[90] T. Seaton Ewart to A. R. M. Lower, quoted in A. R. M. Lower, My First Seventy Five Years (Toronto, 1967), p. 267.

[91] For biography see Stubbs, Lawyers and Laymen, chapter 2.

> Mr. Hagel ought to stay at home . . . . He does not possess the first attribute . . . to make even a decent public man. In his everyday life he may successfully live out the principle that toadyism, sycophancy and 'conciliation' are the secret of success, but these traits will never immortalize him as a public man . . . . Sucking politicians are not in demand.[92]

Following a disputed election in which Hagel's supporters had burned Gimli ballot boxes, he was again under attack,[93] and defeated by a few votes. Failing to establish a political course, Hagel returned to a criminal law specialization in which he excelled.

In the previous provincial election to Hagel's bid for office, the constituency of Rockwood had been the site of a disputed election. Mr. Justice Miller, who resigned from the bench late in 1882, was shortly afterward named Attorney-General in the Norquay government, making it necessary for him to secure a seat in the legislature. In contesting Rockwood in January 1883, the editor of the Free Press commented, "a rude awakening awaits him."[94] Defeated in Rockwood by the incumbent, an action was launched by Miller to dispute the result and unseat his opponent. Miller managed to remove his opponent by exposing corrupt practices of which his own followers were also guilty, but was advised by Manitoba Conservatives to seek election in another riding as he stood little chance of being elected again in Rockwood.[95]

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[92] Manitoba Free Press, 16 July 1886.

[93] Ibid., 27 December 1886.

[94] Ibid., 9 January 1883.

The government of Manitoba was then engaged in a boundary dispute with Ontario and the largest settlement in the disputed zone, Rat Portage, became the center of more altercations involving Miller.[96] Miller entered the fray by running in an election there, promising a seat in the Manitoba legislature on the same day that a candidate for Ontario was doing the same. Election day featured the arrival in Rat Portage of 55 men from the 13th Field Battery of Winnipeg commanded by Lt. Col. William Kennedy, ostensibly there at the request of the Manitoba Attorney-General and the Rat Portage Manitoban candidate in order to prevent the Ontario contingent from tampering with the election ballot boxes. Carloads of 'voters' arrived from Manitoba to insure a sweeping victory for Miller in an election the Free Press regarded as a fraud.

> The majority for Miller was made up of voters taken out from Winnipeg like so many cattle. There are not enough bona-fide property holders in the Constituency to make up the number who voted for Mr. Miller. These men were virtually hired by the Attorney-General and his government . . . . The Attorney-General's support was derived from the lowest order of street loafers and barroom rowdies of Winnipeg.[97]

Alleging that the federal Conservatives provided the funds, the editor concluded, the "Attorney-General should never be allowed to hold office with the fraudulent manufacture of votes."[98] The same source warned the premier that Miller probably had designs on the premiership, but by 1884 that threat was removed when the Varennes seat Miller represented was abolished by the decision of the Judicial Committee of the Privy Council which gave the disputed territory to Ontario. Without a seat, Miller resigned as Attorney-General late in 1884, but he was partly compensated when named the first Registrar-General under the Real Property Act of 1885. As the stormy career of Andrew Miller demonstrated, a career in public life for lawyers carried with it both drawbacks and compensations. In Miller's case, though his style was flamboyant and he attracted much attention, he was unable through his brokering efforts to secure status or remuneration commensurate with his personal ambition.

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[95] Ibid., 15 September 1883.

[96] Morris Zaslow, The Opening of the Canadian North 1870-1914 (Toronto, 1971), pp. 149-52.

[97] 29 September 1883.

L. H. Thomas called it the "most important Canadian state trial of the nineteenth century."[99] That the entire country would be watching events unfold in the plain, crowded courtroom in Regina through the eyes of news correspondents, and that the trial would provide a spectacular opportunity to showcase the legal talents of Western lawyers, was immediately grasped by Manitoba lawyers, eager to augment their reputations by participating in the trial of Louis Riel.[100] Thomas Mayne Daly,[101] Brandon's first lawyer and first mayor, was no exception. As Chairman of the Western Judicial Board, as a staunch and visible supporter of federal disallowance of Manitoba railway legislation and as president of the Tory's Brandon electoral district, Daly rested his appeal for an assignment of legal duties on his record of political service:

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[98] Ibid., 1 October 1883.

[99] L. H. Thomas, "A Judicial Murder--The Trial of Louis Riel," The Settlement of the West, ed. Howard Palmer (Calgary, 1977), p. 37; see also Desmond Morton, ed. The Queen v Louis Riel (Toronto, 1974).

> I mentioned casually in my last letter that I would like nothing better than to take a brief for the prosecution in Queen v Riel et al & I have since then been thinking more of the matter & wondering whether it would be possible for you to vouchsafe me this favor. I don't ask for anything more than to act as Junior Counsel since I am of the Junior Bar.[102]

In a note scribbled to his Justice Minister, A. C. Campbell, the Prime Minister indicated that despite his inexperience, retaining Daly would be "a good move in every way." Reluctant to add any more counsel, Campbell countered that "I have already Robinson Osler and Scott of the Regina Bar and I am to have a french-Canadian." To underline that he had also weighed the political side of the question before dismissing him, Campbell added that "Daly fills no place in the public eye." The only Manitoba lawyer to play a direct role in the trial was T. C. Johnstone of Winnipeg, who was one of two junior counsel acting with the two principal defenders, Francois-Xavier Lemieux and Charles Fitzpatrick, who were recruited by Riel supporters in Quebec.[103]

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[100] Especially useful are D. H. Brown, "The Meaning of Treason in 1885," Saskatchewan History 28 (1975):65-73, Thomas Flanagan and Neil Watson, "The Riel Trial Revisited," Saskatchewan History 34 (1981):57-73 and most recently, Bob Beal and Rod Macleod, Prairie Fire: The 1885 North-West Rebellion (Edmonton, 1984), ch. 16.

[101] For biography see pamphlet, "Thomas Mayne Daly," Manitoba, Historic Resources Branch, 1885 and Roy St. George Stubbs, "The First Juvenile Court Judge: The Honorable Thomas Mayne Daly K.C.," H.S.S.M. Transactions, ser. 3, nos. 34 & 35 (1977-78 & 1978-79):49-66.

[102] P.A.C., MG26 A, Macdonald Papers, T. M. Daly to Macdonald, pp. 201,410-13, 25 May 1885. On the politics of Brandon, see W. Leland Clark, Brandon's Politics and Politicians (Brandon, 1981).

Daly failed to secure any immediate legal gains from the trial for himself, but the earlier call for volunteers to put down the rebellion was profitable in indirect ways for lawyers in Manitoba.[104] A few prominent locals were drawn into active service as was Hugh John Macdonald,[105] who served with the 90th Battalion, but the arrival of Ontario militia regiments allowed local lawyers to reestablish contacts with the social and business elite of central Canada. For example, Richard S. Cassells, attached to the prestigious Queen's Own Rifles Battalion and a young lawyer in Toronto in 1885 and who would later would become a leading corporation lawyer, recorded in his diary meeting many former Ontario school and business acquaintances in

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[103] When the case went on appeal to the Manitoba Court of Queen's Bench, John S. Ewart acted with Fitzpatrick.

[104] The response on the part of all Brandonites to the rebellion demonstrated that they saw economic benefits accruing from it. See Ken Coates, "Western Manitoba and the 1885 Rebellion," Paper presented to the Western Canadian Studies Conference, Edmonton, Fall 1985.

[105] An interesting collection of letters from Hugh John Macdonald to his wife Gertie in Winnipeg are published in George C. Macleod, Q.C., "Sir Hugh John Macdonald," H.S.S.M. Transactions, ser. 3, no. 14 (1957-58):33-53.

Winnipeg.[106] Shortly after Cassells' arrival in Winnipeg, J. D. Cameron, in practice in Winnipeg since 1882, arranged for a round of visiting and dining with friends and relations in Winnipeg, a socio-economic outpost of Toronto society. No doubt many similar contacts were reestablished at this time, but they went unrecorded.

Among the legal community of Manitoba, only Judge Joseph Dubuc appears to have sustained any measure of intimacy with Riel (Riel was Dubuc's house guest several times during his 1883 visits to St. Vital to dispose of property). But Dubuc's earlier compassion for Riel's predicament following the 1869-70 debacle had by 1885 become severe[107] criticism of his illegal actions. When the verdict in the Regina case came on appeal to the Court of Queen's Bench of Manitoba over which Dubuc presided, it was clear that his position as a justice was compromised by his earlier friendship with Riel. It was a no-win situation. For when he chose to absent himself from the trial by returning to Quebec for a Collège reunion, he was accused by newspapers there of abandoning the French Catholic cause. A fellow lawyer and friend from St. Boniface, Thomas A.

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[106] Diary of Lieutenant Cassells, entry for 7 April 1885, in R. C. Macleod, ed., Reminiscences of a Bungle By One of the Bunglers (Edmonton, 1983), pp. 119-20.

[107] P.A.M., MG14 B26, Dubuc Papers, Dubuc to Elie Tassé, 15 and 31 May, 15 June and 20 August 1885. Elie Tassé was a Montreal journalist who solicited the inside story on the North-West Rebellion for La Minerve from Dubuc. This was not an unfamiliar role for Dubuc as he had submitted articles during the 1869-70 disturbances in the Red River Settlement.

Bernier, spoke out in defence of Dubuc, attempting to point out that the standards expected of judges would not allow him to take a partisan stand nor influence his colleagues in this matter regardless of his personal views.[108] Dubuc sincerely believed Riel to be insane, and privately revealed his frustration that "La prétendue commission médicale a été une véritable farce,"[109] and that the execution was unnecessary. He was not, however, in favor of the overreactive nationalist response in Quebec afterwards, although he felt remorse over Riel's death in a deeply personal way that was not shared by lawyers outside the francophone community.

By the 1880's John A. Macdonald had made personal control of patronage throughout the country central to his politics, and political service an essential prerequisite of political appointments of any kind. Gordon Stewart contends that Macdonald's papers reveal that through his "intense methods of patronage dispersal" he so effectively controlled the Conservative party at every level that it was impossible "to become a letter carrier or a tide-waiter in the customs service, or a Q.C. or a judge without a record of active service for the Liberal-Conservative party."[110] Of that Manitoba's leading lawyers were well aware. What was less certain or fixed was the still unfolding pattern of provincial patronage,[111] since provincial political party lines and allegiances were not as firmly entrenched as on the national level.[112] The prizes available were, however, sought with no less enthusiasm by lawyers. In the provincial election of 1888 the government of John Norquay was replaced by Thomas Greenway and his Liberals, and he was soon beseiged by numerous petitioners seeking political favors. Lawyers elected to office, like Clifford Sifton, could make their requests directly, while partners of already well-established firms made their 'confidential' requests with the calm confidence and quiet assurance that their requests would be treated seriously. J. A. M. Aikins, Q.C. of the firm of Aikins, Culver, Patterson and McCleneghan, for example, although a Conservative, sought to exert his influence by corresponding with Premier Greenway, revealing both that networks of prominent contacts in Manitoba regarded Ontario as the principal source of leaders and that the interests of prominent lawyers in shaping the nature of Manitoba went far beyond legal matters:

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[108] T. A. Bernier, "M. le Juge Dubuc et ses détracteurs," Le Manitoba, 14, no. 47 (September 1885).

[109] P.A.M., MG14 B26, Dubuc Papers, Dubuc to Elie Tassé, 29 November 1885.

[110] Gordon Stewart, "John A. Macdonald's Greatest Triumph," Canadian Historical Review 63, no.1 (March 1982):25.

> In the event of your considering names of other than residents of Manitoba for the position of successor to the present Superintendent of Education and of Deputy Minister when such may be appointed I beg to mention the name of L. A. Embree M.A. of Toronto University who has for five years been a public school teacher in Ontario, fifteen years a high school master, preparing school

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[111] D. J. Hall, Clifford Sifton, vol. 1, p. 34.

[112] Colin Campbell wrote "we are not bound down by party ties up here" (P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 24 November 1883).

> teachers being part of his work and for more than four years a member of the Senate of Toronto University. I believe he has been headmaster of the best Collegiate Institute in the Province of Ontario and his present position is regarded as best of the kind in that Province.[113]

Loyal party workers expected to influence the naming of justices of the peace, licenses commissioners and returning officers for their electoral division. Lawyer R. H. Myers of Minnedosa, complaining of an imbalance in naming justices of the peace, wrote "you can imagine my disappointment and that of our friends here when we saw that only three had been selected in the whole County and all three the much despised Rapid [Rapid City] Citizens." Apparently Greenway promised to remedy the oversight, and Myers submitted the names of "good solid men worthy of the position." Apparently not satisfied, and seeking another plum, Myers added that the "Registrar here is totally unfit for his office and at times cannot write his name."[114] Earlier that year Myers had recited a litany of excuses why he as a losing candidate was not culpable for the outcome and made his own case for favorable treatment: "I am now eight years a Barrister and Attorney and capable for the office of Dep. Atty Gen or some other good office in the Court House and trust you may remember me in due season."[115]

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[113] P.A.M., MG13 E1, Greenway Papers, #2,325, J. A. M. Aikins to Hon. Thomas Greenway, 21 October 1889.

[114] Ibid., #1,329, R. H. Myers to Greenway, Private, 24 December 1888.

[115] Ibid., #781, R. H. Myers to Greenway, 16 July 1888.

Accepting sinecures of course carried with it a corresponding risk that the government might change. J. P. Curran, in practice with Henry Vivian until 1887, had been appointed Law Clerk of the Legislative Assembly at $1,200 per annum by Attorney-General C. E. Hamilton, but was informed in 1888 by the incoming Attorney-General, Joe Martin,[116] that his position was to be terminated as a cost-cutting measure. Faced with a loss of salary, Curran speciously pleaded that he would never have taken the position or severed "all his business connections and associations" had he known the position would not be permanent and "bona fide"[117] and he therefore requested appropriate compensation from the premier. Such earnest supplications met with varying results, but few could match the obsequious importuning of E. M. Wood, who had left the province earlier as a fugitive and who was now seeking to gain by his father's Liberal reputation:

> I understand that your Government will, in all probability have the suggesting of names to the Northern Pacific, of persons to occupy positions on the road. Will you kindly in the midst of all your duties bestow a thought on me. You know what I have always been and my father before me. Could you drop me a private line, stating you will do this for me. I would go up and see you instead of writing, but I know you are bothered and don't want to be one of the bores. Perhaps you will

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[116] Although of questionable quality in its claims about its subject, Peter Brock, Fighting Joe Martin: Founder of the Liberal Party in the West (Vancouver, 1981) reveals a most colorful career.

[117] P.A.M., MG13 E1, Greenway Papers, #11,960, Petition of John Philpot Curran to His Honor the Lieutenant Governor-in-Council.

> appreciate this, eh?[118]

Wood then asked specifically for the position of claims agent,[119] but apparently hearing of another impending vacancy in the government service, offered his services as clerk of the Legislature and Executive Council which he explained he could easily perform in addition to his duties in the office of Municipal commissioner of Manitoba.[120] Hearing that no position as a claims agent would be forthcoming, Wood stepped up his begging:

> I most earnestly submit to you that where there is a will there is a way and most certainly think after all my father has done for this country and the Liberal party throughout the whole Dominion of Canada, the giving to me of a paltry little position would be only just . . . . It means bread for my wife & children this winter.[121]

When the other position also failed to materialize, his communications became increasingly anxious but to no avail.[122] Straining his father's memory and Liberal associations to the breaking point only served to emphasize the impotence of his political brokering. By 1888

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[118] Ibid., #881, E. M. Wood to Greenway, Private, 15 August 1888.

[119] Ibid., #911, E. M. Wood to Greenway, Private, 21 August 1888 and #1,025, E. M. Wood to Greenway, 3 September 1888.

[120] Ibid., #2,277, E. M. Wood to Greenway, 18 September 1888.

[121] Ibid., #1,158, E. M. Wood to Greenway, Private, 22 October 1888.

[122] Ibid., #1,268, E. M. Wood to Greenway, Private, 28 November 1888, #1,669, E. M. Wood to Greenway, Private, 27 February 1889 and #1,744, E. M. Wood to Greenway, Private, 4 March 1889.

E. M. Wood was a spent force as a lawyer but he retained work as a civil servant. Ineffective as an economic and political broker, the social circles of the prominent and the transactions which took place there were largely closed to him as well.

Historians of Manitoba between 1870 and 1900 have emphasized the struggle for cultural dominance by native and ethnic minorities and the vigorous efforts of the British Protestant settlers from Ontario to transform their surroundings by transplanting the political, economic, legal and social institutions with which they were familiar.[123] As active and conscientious "culture bearers,"[124] most Manitoba lawyers belonged to English, Irish or Scottish majority components of the population and were denominationally identified with Anglican, Methodist, Presbyterian or Congregationalist religious communities. Confident of their mission to "point the way to a new and better civilization for all of Canada,"[125] denominational lines were blurred and ancestral divisions downplayed in an aggressive and progressive cultural unity. With ready access to financial resources, a normally superior level of education or professional skill and a genteel social rank in their older societies, such 'privileged settlers' in the West possessed significant assets with which to pack their cultural baggage.[126]

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[123] Friesen, The Canadian Prairies, ch. 9; J. E. Rea, "The Roots of Prairie Society," Prairie Perspectives I, ed. David Gagan (Toronto, 1970), pp. 46-57; and W. L. Morton, Manitoba A History, chs. 9 and 10.

[124] Morris Mott, "The British Protestant Pioneers and the Establishment of Manly Sports in Manitoba, 1870-1886," Journal of Sport History 7, no. 3 (Winter 1980):25.

[125] Owram, The Promise of Eden, p. 148.

Combining those assets with intrinsic powers based on unique knowledge and skills allowed lawyers in Manitoba during the 1880's to play a significant role in advancing the aims of the majoritarian mission and to simultaneously advance their own careers through a process of social brokerage. While his attitudes and experience in no sense covered the whole range of values held or of social transactions engaged in, Colin Campbell's observations of the process have about them a metaphorical ring which is instructive.

Deeply infused with the social attitudes emphasized by his Presbyterian upbringing, Campbell regarded frivolous or idle dissipations with disdain and was equally devoted to the benefits of individual initiative, seriousness, diligence and devotion to duty. One of the "duties"[127] which Campbell thought lawyers must not neglect was their social and recreational affairs. Both social contacts and private pursuits were valued if purposeful. Describing such behavior, Morris Mott writes that Manitobans like Campbell believed "that what really separated great men from insignificant ones was not 'talent' or fortunate circumstances but determination and willingness to use leisure for self-improvement."[128] For Campbell choosing "wholesome pleasures" and avoiding "vicious ones" began through one's association with the church, but he was worried and uneasy for its future.[129] To Minnie he wrote "after all religion is a very important factor in this world," but he found that "gradually its influence is being lessened," because it was "not keeping progress with the advancement of the world" and though "its advocates are numerous yet they seem to be utterly unable to storm the tide of infidelity and wickedness engulfing the world." Campbell held out little hope, despairing "it will continue until different people captain our cause."[130] Joining many of his faith, Campbell favored personal abstinence and legal prohibition on "economic social moral political" grounds but curiously noted that "No where in the Bible is total abstinence taught or required."[131] If the evils of indolence and frivolity were to be curtailed by removing the temptations which produced them, then personal improvement could be cultivated by selecting appropriate ways to use one's time. Campbell's attitude regarding reading outside the law reveals how completely such attitudes enveloped his thinking.

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[126] L. G. Thomas, "Privileged Settlers," pp. 155-56, 161.

[127] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 1 March 1881.

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[128] Mott, "The British Protestant Pioneers," p. 27.

[129] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 18 April 1881.

[130] Ibid., 26 July 1881. A provocative study by Ramsay Cook, The Regenerators Social Criticism in Late Victorian English Canada (Toronto, 1985) examines the crisis of faith which faced many Protestants.

[131] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 18 April 1881. Campbell's reform zeal for temperance did not extend to suffrage, however. He wrote, "women don't seem to care for the domain of politics--men do and rightly so for it is of paramount importance who governs us" (Ibid., 27 May 1882).

> The true question in reading is not what we receive but what we are made to give from our reading that profits. True the great mass will object because they are indolent to such readers there are a super-abundance of writers for instance the senseless sensational trashy novels, instead of deriving any benefit therefrom or profiting by the reading thereof they are a positive injury . . . . I would rather read Longfellow Tennyson and the touching ballads of Will Carlton than Homer Virgil & C and assuredly derive more profit by so doing. I send you Princeton Review . . . This I believe is the ablest periodical in America far surpassing in my estimation the Fortnightly Review whose able writers direct too much of their time & attention against Christianity & its doctrines and are more dangerous than the infidel works of Paine and Voltaire.[132]

In pursuing his role as a social broker in church, society, athletics and entertainment, Campbell was governed by the same earnest rectitude and purposefulness. Shortly after arriving in Winnipeg, Campbell joined St. Andrew's Presbyterian, filling his Sundays with morning services and afternoon "Sunday School," and attending week night cottage prayer meetings. With apparent delight he reported to Minnie that he made a potentially useful social contact, writing, "met an old friend Mr. Irvine of the Extra Life Insurance," who, Campbell explained was planning to reside in the city with his family, adding "I am very glad . . . and think it would be an excellent place for me to spend an occasional evening."[133] Several months later he was teaching a Sunday School class of "six boys ranging from 12 to 14 years of age" who were proving to be a handful, for "amongst them" there was "the proverbial bad boy who disturbs the class."[134] Campbell's faithfulness was rewarded, for within a year Campbell was nominated and elected an elder of the church. That he was making a good impression was affirmed by Minnie who wrote, "your being nominated shows in what high esteem you are held"[135] and seconded by one of his future in-laws, who wrote "I cannot but think your walk must have been circumspect or they would not have you. No higher tribute could they have bestowed."[136]

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[132] Ibid., 29 October 1881; contrast the attitudes and notions of a contemporary Methodist in Michael Bliss, A Canadian Millionaire The Life and Business Times of Sir Joseph Flavelle, Bart. 1858-1939 (Toronto, 1978). For general social attitudes of Ontario at the time, see Michael Bliss, "The Protective Impulse: An Approach to the Social History of Oliver Mowat's Ontario," Oliver Mowat's Ontario, ed. Donald Swainson (Toronto, 1972).

In the following years responsibilities which fell to him by church association became increasingly important and took into account his legal skills. After being elected as a trustee of St. Andrew's congregation, Campbell pointed out "we had got into a very legal difficulty and it has taken some time to remove the cloud off of our lands and could only be done by the resignation of old trustees election of new ones and conveyance to them."[137] Having a lawyer or two in the congregation was obviously an asset. Not discounting his obvious religious convictions, Campbell's Presbyterian connections yielded a position on the Board of Management of Manitoba College and provided an opportunity to work closely with Rev. Dr. C. B. Pitblado, pastor of St. Andrew's 1881-89, a man whom he admired and whose son, Isaac, Campbell later recruited for his firm.[138] As early as 1886 Campbell had his eye on Isaac. He wrote to Minnie, "Isaac Pitblado graduated B.A. with flying colours coming out first in everything taking the university medal and $100 scholarship--and Manitoba College distinguished itself taking 5 out of a possible 7 medals."[139]

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[133] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 22 February 1882.

[134] Ibid., 8 July 1882.

[135] P.A.M., MG14 B21, Colin Campbell Papers, Box #1, Minnie to Colin, 11 November 1882.

[136] Ibid., H. A. Buck to Campbell, 2 December 1882.

Joining voluntary associations often served several functions at once, and occasionally edification, charity and professional entrepreneurship were conveniently combined. Soon after arriving in Manitoba, Campbell wrote, "last night I attended a sacred Concert in aid of the General hospital who are greatly in need of funds with Jeremy Robinson and must hurry and finish this as I have an appointment with him tonight for business purposes."[140] Involvement in the YMCA literary program of lectures and attending "the Philharmonic," which admitted "only by invitation," Campbell deemed proper and respectable entertainments, but he took a very different position "re clubs and theatres--having finally come to the conclusion I cannot be benefitted by either."[141] As Morris Mott explains, for many Manitobans, in order for a recreation to merit spending time on it, "They had to provide something more than mere amusement."[142] However, when business required it, The Manitoba Club and The Brandon Club, when Campbell was doing business there, were necessary haunts,[143] even though a billiards table was a seemingly necessary piece of furniture.

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[137] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 19 January 1884.

[138] Ibid., 3 November 1883; P.A.M., RG3 A1, Manitoba, Attorney General Files, Papers of Colin H. Campbell, Letterbook #3 (Private), Campbell to E. C. S. Huycke, K.C. (personal), 18 September 1903, p. 461; Ibid., Campbell to Alfred Hoskin, K.C., 18 September 1903, p. 463; and Ibid., Campbell to J. Turnbull, General Manager of the Bank of Hamilton, 21 September 1903, p. 475. Isaac Pitblado came to dominate the firm Campbell had begun. See G. A. Higginbottom, "Isaac Pitblado, Q.C., L.L.D., In Memoriam," Canadian Bar Journal 8, no. 1 (February 1965):22-27; Anne Tillenius, Learned Friends Reminiscences Pitblado & Hoskin 1882-1974 (Winnipeg, 1974); and Keith Turner, "Isaac Pitblado," an address given in celebration of the 100th anniversary of Pitblado & Hoskin, 17 December 1982.

[139] P.A.M., MG14 C6, Minnie Campbell Papers, Box #2, Colin to Minnie, 5 June 1886.

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[140] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 13 January 1882.

[141] Ibid., 1 March 1882 and 12 May 1883. Clubs which encouraged the vices of dancing, drinking and gambling were studiously avoided. A suitable activity was one described to Minnie:

> "Today I have had a great deal of mental work a long opinion as to the liability of a client upon a contract so tonight I feel like relaxation and I intend to go out and hear Dr. Rae on the North Pole polar Regions and the Hudson's Bay Route of so much importance to this Country" (Ibid., 14 October 1882).

[142] Mott, "The British Protestant Pioneers," p. 27.

[143] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 7 October 1882. The Manitoba Club was founded in 1874. See Mary Lyle Benham, The Manitoba Club

Believing that the West was an ideal place for young men like himself because the necessity of "self-dependence" produced "austere and vigorous energy,"[144] Campbell reported improving health: "everyday I am getting fleshier and if I continue you will not be able to recognize me when you next see me."[145] Proud of his improving physical prowess, which he attributed to Western conditions, Campbell reported engaging in various respectable and widely endorsed 'manly sports.'[146] "I have had two baths in the Red River. Yes I

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100 Years, 1874-1974 (Winnipeg, 1974). The Brandon Club, which served the needs of a similar clientele, was organized in late August 1882. See Manitoba Free Press, 7 September 1882.

[144] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 14 October 1882.

[145] Ibid., 3 November 1883.

[146] Mott, "The British Protestant Pioneers," pp. 28-29 offers a definition:

> "Manly games were simply those that seemed to test, and therefore dramatize and inculcate, that quality of character that pioneer Manitobans and other Victorians called 'manliness.' None of them bothered to define precisely what was meant by manliness, but as one reads through their speeches and writings on the subject it becomes clear that manliness was the ultimate masculine quality, the male attribute incorporating a number of smaller, more particular ones. Manitobans' ideal was one they shared with most people in the English-speaking world in the latter half of the nineteenth century. A major component of it was what the ancient Greeks had called thymos--physical energy, vitality and courage. . . . Manitobans knew that manliness was more than thymos. It also incorporated a large number of desirable mental and moral attributes, things such as decisiveness, mental vigor and clearheadedness, determination, discipline, the spirit of fair play, loyalty and integrity. Above all, it included the mature moral strength that ensured that thymos would be used, in the words of the influential English novelist Thomas Hughes,

am a good swimmer and beat nearly all the boys . . . . I like athletics very much boating Cricketing etc. and intend to go in for them more than I have done."[147] Competitive sports included amateur track and field: "We arranged and went out to the races where I spent a very nice afternoon watching the races running races with Mr Porter and generally forgetting about the law."[148] And when not directly involved, Campbell and his friends were spectators at lacrosse and other matches.[149] Even the daily routine of the law office was interrupted to ensure that both mind and body were fit. "After tea at new place we take about 20 minutes exercise upon the bar bells. Mr. De Jouche is a splendid gymnast and he drills us."[150]

Engaging in a regimen of physical self-improvement afforded wonderful opportunities as well to establish and cement useful business relationships, as Campbell explained, "Monday night Col. Gracey and I are to commence pulling on the river for exercise from 7 to 8 every night."[151] While

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'for the protection of the weak, and the advancement of all righteous causes.'"

[147] P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin to Minnie, 14 July 1883.

[148] Ibid., 10 September 1883.

[149] Ibid., 24 May 1884. In 1886 Campbell reported attendance as a spectator: "This P.M. I am going to a baseball match all the rage here--C.P.R. vs Hotels" (Ibid., Box #2, Colin to Minnie, 6 July 1886).

[150] Ibid., Box #1, Colin to Minnie, 8 September 1883.

[151] Ibid., 2 June 1883.

perhaps less strenuous, organized fowl shooting and fishing excursions further emphasized overlapping male sporting and social contacts.[152] After his marriage in 1884, Campbell's participation turned to croquet and lawn tennis and to helping to organize sports clubs.[153] Aside from the obvious practical reasons, the imperative to become involved was, as Mott explains, "The sense of duty they felt to establish and maintain British culture in their new, still only semi-civilized part of the world."[154] While the best traditions of the Empire were maintained through energetic involvement as founding members of sports clubs, the prominence of those invited to volunteer their time and efforts was, at the same time, underscored. Such involvements also reinforced their associations across a broad spectrum of activities from cultural affairs to the founding and developing of many inchoate institutions.

During the 1880's the professional avenues of integration for lawyers remained important because of their increased numbers, but for lawyers to achieve prominence it was absolutely essential that they function as effective brokers outside professional circles. Business contacts which won lucrative solicitorships and substantial litigation or led to significant investment opportunities characterized the associations forged by lawyers like Colin Campbell and J. A. M. Aikins, while in contrast members of the 'firstcomers,' E. M. Wood, Samuel C. Biggs and Henry J. Clarke were increasingly overtaken by events and overwhelmed by bad loans and outdated or dishonest professional practices. Running Charles E. Hamilton, a junior member of J. A. M. Aikins' firm, successfully for mayor in 1884 demonstrated the extent to which the dominant legal and commercial community of Winnipeg were defining their goals in common. Direct involvement in provincial electoral politics was a necessary adjunct of enhancing professional reputations or of improving one's position relative to the dispensing of political favors. However, rewards of this kind of brokering, were uneven. The same was true of political patronage. The most prominent lawyers simply expected favors for themselves and friends while others, like E. M. Wood, whose star had clearly fallen on hard times and who was reduced to begging, must have been regarded by favor dispensers with both amusement and mild annoyance. Girded by an intermingling of religious, cultural and social aims, lawyer involvements with voluntary organizations typically established valuable contacts and provided ample scope for demonstrating legal skills outside the context of law offices and courts. Meanwhile, purposeful recreation provided abundant opportunity for developing a well-rounded professional personality and public signature--a prominent reputation.

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[152] P.A.M., MG14 B21, Colin Campbell Papers, Box #1, Minnie to Colin, 23 September 1882; P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Colin To Minnie, 2 June 1883.

[153] Ibid., Box#2, Colin to My Dear Love, 21 May 1886.

[154] Mott, "The British Protestant Pioneers," p. 29.

CHAPTER VIII

NEWCOMERS: CHANGING THE STRUCTURE OF PROMINENCE, 1878-88

For the legal newcomers arriving between 1878 and 1888 who were to assume a measure of prominence in the province, it was a critical time. As the ranks of the profession rapidly swelled in number, they were on hand to witness and effect changes designed to exercise control in the "market for their expertise" and also to collectively assert claims to a "special social status."[1] Cognizant of their professional status, newcomer's contacts with other lawyers and with the public in general were characterized by purposeful brokering in legal and social transactions. As elevated status depended upon the legitimacy of their claims of quality in the service they provided, leading lawyers in the province reflected a concern that intrinsic powers, based on knowledge and skill not be abused and responded, with mixed results, to the challenge of establishing the parameters of responsible legal practice.

Part of the responsibility which fell to prominent lawyers was to lead by example. That entailed establishing a professional style, which involved many of the intangible qualities of thought and action that came to characterize an ideal in Manitoba. Drawn to and concentrated in the largest commercial centers in the province, leading lawyers could not ignore the centripetal pull of the courts; yet at the same time, they joined arms with the broader centrifugal forces which were part of the commercial and metropolitan dominance of larger centers such as Winnipeg and latterly, Brandon. Colin Campbell revealed much about the attitude and behavioral changes that were occurring in the legal profession. When the insights he provided are combined with cross-sectional biographical factors using prosopographical techniques,[2] the broader context and structural reality of prominence in Manitoba becomes an even more complete picture.

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[1] Magali Sarfatti Larson, The Rise of Professionalism A Sociological Analysis (Berkeley, 1977), p. xvi identifies these as the twin aims of professional organization and life. Also subscribing to this community of self-interest interpretation of the professions is Auerbach, Unequal Justice.

By 1888 the character of the legal profession in Manitoba was increasingly shaped by 'newcomers' who were figuring prominently in the legal life of the province, or were soon destined to do so. Joining the fourteen 'first-comers' still active that year, were sixty-five lawyers who could be characterized as prominent, most of whom were located in or near Winnipeg.

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[2] See Lawrence Stone, "Prosopography," Daedalus 100 (Winter 1971):46-79.

TABLE 8.1

SIXTY-FIVE 'NEWCOMERS'

John Agnew
James Albert Manning Aikins
George Allan
Alfred Joseph Andrews
William D. Ardagh
George W. Baker
Thomas Bernier
John D. Cameron
Colin H. Campbell
Isaac Campbell
Benjamin E. Chaffey
George Coldwell
George B. Coleman
Louis W. Coutlee
Horace Crawford
John Crerar
Thomas D. Cumberland
John P. Curran
Thomas Mayne Daly
Alexander Dawson
W. A. Donald
George Elliott
John S. Ewart
James Fisher
David Glass
Nathaniel Francis Hagel
Alexander Haggart
Charles E. Hamilton
John S. Hough
Thomas Howden
Hector Mansfield Howell
Richard W. Jameson
Albert C. Killam
John N. Kirchhoffer
Corbet Locke
Daniel A. Macdonald
Hugh John Macdonald
Patrick A. Macdonald
Lendrum McMeans
Archer Martin
Joseph Martin
Charles J. Mickle
James A. Miller
Albert Monkman
William R. Mulock
John H. Munson
George F. Munroe
Robert H. Myers
Frank Staynor Nugent
George Patterson
William E. Perdue
Frank H. Phippen
James E. P. Prendergast
Louis A. Prud'homme
Albert E. Richards
Thomas Robinson
Clifford Sifton
Thomas Wardlaw Taylor
James S. Tupper
William J. Tupper
Geoffrey H. Walker
Lewis Wallbridge
John Wemyss
Charles P. Wilson
E. M. Wood

With the exception of George Munroe, who was born in the Kildonan district and educated at St. John's and Manitoba Colleges,[3] all the lawyers in the cohort of newcomers arrived from outside Manitoba for motives only partially revealed by available biographical data. As in the case of the 'firstcomers,' those who came on the strength of judicial appointments are most easily identified. James A. Miller, a St. Catharine's lawyer and active Conservative was rewarded in 1880 with an appointment as puisné judge of the Queen's Bench in Manitoba.[4] Lewis Wallbridge, named Chief Justice in 1882 at the age of seventy, was a man with extensive political experience, although there were minor reservations expressed about him.[5] Thomas W. Taylor was appointed puisné judge of the Court of Queen's Bench in 1883, after Judge Miller angrily resigned when passed over in 1882 for Chief Justice of Manitoba. Beginning his legal career in Lower Canada, Louis Coutlee, who was on hand to assist in organizing the administration of justice in the territories annexed when provincial boundaries were extended in 1881, became Deputy Attorney

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[3] George Bryce, A History of Manitoba: Its Resources and People (Toronto, 1906), pp. 496-97.

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[4] The Canada Gazette 20 (October 1880).

[5] Apparently John A. Macdonald was concerned with the dignity of the bench, as were leading members of the profession, but mainly for cosmetic reasons. Aware that Wallbridge had a mouth of very bad teeth, he encouraged Mackenzie Bowell to approach Wallbridge about it, to which Bowell replied:

> "The great question of teeth or no teeth, I find, is somewhat difficult to solve.
>
> Whilst I agree with you that it would add much to the appearance, and perhaps dignity, of the Bench, if the Chief Justice had a mouth of good teeth, still when you consider the extreme egoism of the [new] Chief Justice of Manitoba, and the difficulty of approaching him upon a subject of such gnashing importance, you will see the difficulty of accomplishing the object you have in view" (quoted in P. B. Waite, "Chartered Libertine? A Case Against Sir John A. Macdonald and Some Answers," H.S.S.M. Transactions, ser. 3, no. 32 [1975-76]:48).

General and Law Clerk of the Assembly. Geoffrey H. Walker[6] and E. M. Wood, who began their legal work in Manitoba, were in the province because their lawyer fathers brought them as young men, while Alfred J. Andrews[7] came to Winnipeg in 1881 when only sixteen years old to join his older brother, G. A. F. Andrews, who was in partnership with D. M. Walker, then the Attorney General of Manitoba. Unfortunately, after completing his articles of clerkship and joining his brother in practice in 1886, young Andrews' promising start was nearly reversed in the fall of 1890 when his older brother and wife were drowned in a skating accident on the Red River.

Several lawyers who came in 1879 had invitations to join Winnipeg lawyers in partnership, but the majority of newcomers, who were generally youthful and who mostly arrived during the height of the Manitoba real estate boom, appear to have been responding to a perceived 'main chance' to become established quickly in a viable professional practice. That was certainly true of Colin Campbell who was twenty-three when he arrived in Winnipeg in 1882, and for Hector M. Howell, said to be "heartily sick of being a village pettifogger."[8] The average age of lawyers at the time of their arrival in Manitoba in the 1880's reflected the newness of the country and is indicative of the opportunities perceived there. But the relative youthfulness of those who were successful in Manitoba should not, however, obscure the fact that many of those who failed in Manitoba were also young.

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[6] Walker arrived in Winnipeg in 1874 and articled as a law clerk with his father, David Marr Walker, before his call to the bar in 1880. In 1881 he was appointed prothonotary of the Court of Queen's Bench, remaining in that capacity until retirement. Manitoba Bar News 3, no. 9 (May 1931):7.

[7] For biography see Roy St. George Stubbs, "A. J. Andrews: Nestor of the Manitoba Bar," Canadian Bar Review 24 (1946):183-97.

An examination of the geographical origins of sixty-five lawyers who began their careers in Manitoba at this time and who achieved varying degrees of prominence[9] uncovers little that is surprising, except perhaps the overwhelming dominance of emigrants from Ontario. Fifty-four came directly from Ontario, with Toronto leading the way, followed by a significant number of newcomers from the mid-size urban centres of Hamilton, St. Catherines, London, Brantford and Stratford, west of Toronto, and a slightly smaller grouping from Belleville, Kingston, Peterborough and Brockville, east of Toronto. Three Manitoba lawyers could trace their roots to the Maritime provinces--James Stewart Tupper,[10] son of Sir Charles Tupper, and his younger brother, William Johnson Tupper,[11] each having discontinued their associations with Sir John Thompson's Halifax, Nova Scotia firm before moving to Winnipeg. Daniel A. Macdonald of Prince Edward Island, after practicing law briefly in Winnipeg, moved to Portage la Prairie and founded the firm of Macdonald & McPherson.[12] John Wemyss, with a Master of Arts from Glasgow University in 1883, was the only lawyer in the prominent grouping who came to practice in the province from outside of Canada.[13] He joined his wealthy merchant father, whose pursuit of land interests had drawn him to Neepawa, Manitoba.

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[8] Manitoba Legislative Library, Biography Scrapbooks 1-9, "Eminent Winnipeggers No. VII, Mr. H. M. Howell."

[9] Rigid distinctions between those who were simply prominent and those who were members of an elite are not made in this thesis, although contemporary lawyers probably understood the differences between mere prominence and elite status. Gerald W. Gawalt, "The Impact of Industrialization on the Legal Profession in Massachusetts, 1870-1900," The New High Priests, in a study involving thousands of lawyers, has drawn this distinction.

[10] He came to Manitoba early in 1882 after serving as

The most dramatic change from the previous decade was that fewer lawyers came from Quebec, compared to the number from Ontario. Identifying with the shrinking Franco-Manitoban minority, lawyers Thomas A. Bernier,[14] Louis A.

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a reporter to the Court of Appeal in Ontario and as a junior partner of J. J. Foy (later Attorney General of Ontario), in order to form a partnership with Hugh John Macdonald. Canada Law Journal 18 (March 1882):84.

[11] For biography see Shath Square, "Lieutenant-Governor of Manitoba: Part Twelve," Winnipeg Free Press, 17 July 1971.

[12] Macdonald completed his career on the bench. In 1906 he was appointed puisne judge of the King's Bench and in 1927 he became Chief Justice upon the death of C. J. Mathers.

[13] Wemyss was the paternal grandfather of Margaret Laurence, a celebrated Canadian author. See Joan Hind-Smith, Three Voices (Toronto, 1975), p. 4.

[14] See Arthur I. Silver, The French Canadian Idea of Confederation 1864-1900 (Toronto, 1982) pp. 135-36.

Prud'homme[15] and James E. P. Prendergast,[16] nevertheless, embarked upon notable careers. Not unlike his predecessors from Quebec, Bernier had combined law practice and journalism before emigrating to Manitoba in 1880 and settling at St. Agathe. As a Conservative, the political appointments which followed allowed Bernier to represent the interests of the French Catholic minority in a number of forums. Bernier was appointed in 1882 as a member of the commission investigating the legality of Infant Lands transactions,[17] served as Catholic Superintendent of Education (1881-1890),[18] French clerk of the Legislative Assembly, member of the Provincial Board of Agriculture, chairman of the Eastern Judicial District Board, registrar of the University of Manitoba (1882-1893),[19] and as the first mayor of St.

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[15] See Philip C. Locke, "Judge L. A. Prud'homme," *Manitoba Bar News* 13, no. 7 (March 1941):78-80; J. Elie Auclair, "L'Honorable juge Prud'homme, 1853-1941," Royal Society of Canada *Transactions*, ser. 3, s. 1 (1941):135-40.

[16] Roy St. George Stubbs, *Lawyers and Laymen of Western Canada* (Toronto, 1939) contains a useful biography.

[17] A useful guide to the dates, venues and participants in such proceedings is Paul Neilson, comp., "Bibliography of Manitoba Royal Commissions of Inquiry and Special Committees," unpublished, n.d., Manitoba Legislative Library.

[18] T. A. Bernier, *Rapport du surintendant des écoles catholiques, Province de Manitoba pour l'année 1881* (St. Boniface, 1882); Ibid., *Mémoire préparé par la section catholique du Bureau d'Education de la Province de Manitoba en vue de l' Exposition coloniale à Londres, 1886* (St. Boniface, 1882).

[19] Of particular concern was the relationship of St. Boniface College to the University. See A. B. Baird, "History of the University of Manitoba," *Manitoba Essays*, ed. R. C. Lodge (Toronto, 1937), especially pp. 19-37.

Boniface (1882-1888), before his appointment to the Senate in 1892. In the same spirit as firstcomers Joseph Royal and Joseph Dubuc, T. A. Bernier responded to the appeals of Archbishop Alexandre-Antonin Taché to come to the province to provide secular leadership. Presiding over the Société de colonisation de Manitoba, Bernier joined other St. Boniface colonizers in encouraging colonists from Quebec and New England to settle in Manitoba[20] and he promoted the West enthusiastically in his panegyric Manitoba, champ d'immigration (Ottawa, 1887).[21] Similarly, Louis Prud'homme, a devout Catholic and brother-in-law of Joseph Dubuc, joined Joseph Royal in law partnership in 1880 or 1881, and assisted in editing Le Métis and Le Manitoba. Appointed judge of the County Court, Eastern Judicial District in 1885[22] when only thirty-one years old, because of his bilingual skills, Prud'homme had previously won election to the provincial legislature in 1882 and 1884, but ended his partisan political involvement upon moving to the bench. His interest in preserving, augmenting and understanding the French Canadian heritage, however, endured.

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[20] T. A. Bernier, "Agriculture, colonisation, émigration, repatriement," discours à la Société Saint-Jean-Baptiste, Montreal, 1984, Le Manitoba, 24 July 1884.

[21] Silver, The French Canadian Idea of Confederation, p. 176 points out that by constantly expressing fears that Anglo-Protestant immigration was going to swamp the French element in Manitoba, Bernier and others were actually discouraging immigration, thus having the opposite effect from the one they intended.

[22] Manitoba Law Journal 3, no. 8 (August 1885):128.

Seeking escape from the then economically depressed circumstances of his native Quebec City in 1882, James Prendergast soon threw himself into politics in Manitoba, claiming the provincial seat vacated by Prud'homme in 1885, and in 1888 securing a cabinet posting as Provincial Secretary in the Greenway government. The posting offered Prendergast a unimpaired vantage point from which to view growing attacks on denominational rights in education.[23]

The paternal ethnic origins and the religious affiliations of Manitoba's second wave of lawyers can be determined with certainty for only a portion of the sixty-five lawyers included in the study for this period. Recognizing that biographical sketches for typical Who's Who publications frequently relied on information supplied by the participant and, perhaps to some degree, reflects their mastery of the art of self-promotion or the bias of the editor, the reporting of paternal ethnic origin nevertheless provokes comment. When a British background was assumed, as was most frequently the case, the ethnic origin of the parents is ignored, unless of course, the subject was born and reared in some remote part of the Empire. In the case of Richard Willis Jameson, for example, later a mayor of Winnipeg and Member of Parliament, that he was born in Capetown, South Africa of a military family, educated at

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[23] T. S. Mitchell, "Forging a New Protestant Ontario on the Agricultural Frontier: Public Schools in Brandon and the Origins of the Manitoba School Question, 1881-1890," Prairie Forum 2 (Spring 1986):33-49.

Cambridge, England and called to the bar of England and Ontario before arriving in Manitoba, was all proudly noted. The parentage of three out of four lawyers from Quebec was French Canadian, although in the case of Prendergast, Irish antecedents were also stressed. Of the three lawyers who were identified as descending from United Empire Loyalist stock, two, Lewis Wallbridge and Hector Mansfield Howell, were still closely associated with the Loyalist community of Belleville, Ontario before emigrating. More likely to be reported were origins that were Scottish or Irish. Eleven lawyers were identified with a Scottish tradition and one, Colin Campbell, had a Scots-Irish background; the numbers do not seem inconsistent with the proportion of Scots in the general population of Manitoba at the time.[24] Ten lawyers designating an Irish heritage stressed the continued importance of the legal profession which was regarded in particular ethnic communities as an avenue of self-improvement and potential prominence.

The religious affiliations of the fifty lawyers where an association is indicated, reveal a not unexpected correlation between ethnic heritage and church membership. In addition, the numbers reflect the emergent demographic realities of Manitoba in general, which witnessed large increases in the Protestant-Ontarian component of the population. With only three lawyers belonging to the Roman

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[24] Alan R. Turner, "Scottish Settlement of the West," The Scottish Tradition in Canada, ed. W. Stanford Reid (Toronto, 1976), p. 84, Table I.

Catholic faith, the remainder were divided among Protestant denominations: twenty-seven Anglicans, fifteen Presbyterians, five Methodists, one Unitarian, one Congregationalist and one of indeterminate affiliation. Among prominent lawyers, it appears that the Anglican and Presbyterian faiths continued to be the most popular, although crossing over denominational lines did occur. Apparently J. S. Ewart, although listed as Presbyterian as late as 1898,[25] offended his mother, the Presbyterian Missionary Society and even Lady Ishbel Aberdeen by taking his family to an Anglican church.[26] Whether he was drawn there by Episcopalian sacramental forms and hierarchical structure or merely by the convivial atmosphere of a narthex and church steps peopled by familiar business and other weekday associates, is not clear.

Levels of personal religious conviction are very difficult to measure, but evidence of commitment based on active participation indicates a great range, with the most active serving in congregational leadership positions such as lay delegates at Synods and conventions or wardens and elders, and the least active attending church irregularly. The profession was sensitive, however, about its image in this regard. Piqued by what they regarded as an unfair criticism by a Toronto clergyman who used a sermon to answer his own question, "Why lawyers are poor church goers?" the editors of the Canada Law Journal retorted:

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[25] Henry J. Morgan, ed., The Canadian Men and Women of Our Time (Toronto, 1898), p. 317.

[26] Shaw, "The Role of John S. Ewart in the Manitoba School Question," p. 7.

> Lawyers, with their faults, are generally logical, and, by reason of their training, inclined to serve the 'eternal fitness of things,' and would not, therefore, if disposed to a 'place of worship,' select a meeting where the object of the orator is apparently to make his audience laugh by cracking stale jokes about lawyers. We like these jokes ourselves when reasonably fresh, and give our readers all we come across; but when we feel inclined for a hearty laugh, we naturally go to a comic opera, a circus, or nigger minstrel show on a week day.[27]

Manitoba lawyers no doubt would have shared the sentiment.

Examining generational changes by comparing the occupations of fathers and sons in thirty-seven cases from the 'newcomer' cohort reveals a number of remarkable structural shifts in the nature of social mobility.[28] Whereas the relative influence of fathers holding important positions was of little or no consequence among the 'first-comers,' it was an important factor in the advancement of leading lawyers among the 'newcomers.' The most notable examples were J. A. M. Aikins, whose father was Lieutenant Governor of Manitoba (1882-1887), Hugh John Macdonald, who, though he wished to escape the political expectations of his father's prime ministerial shadow, was unable to do so successfully,[29] and J. S. and W. J. Tupper, whose father, Charles Tupper, as a member of the federal cabinet, even embarrassed his colleagues in his enthusiastic nepotism.[30] While certain advantages accrued to sons of prominent fathers, as in the case of the four men mentioned above, the expectations that accompanied such advantages could have a crippling effect upon individuals unable to live up to the image of their fathers, as in the rueful case of E. M. Wood. For the remaining thirty-two lawyers whose occupational circumstances can be determined, as many as sixteen had fathers who were able to impart professional attitudes and aspirations. Ten were lawyers and were normally instrumental in helping to place sons in suitable articles or partnerships after a decision was taken to enter the profession.[31]

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[27] Canada Law Journal 28, no. 19 (December 1892):577.

[28] Both theoretical and statistical sophistication are necessary when the number of subjects is great. See Michael B. Katz, "Occupational Classification in History," Journal of Interdisciplinary History 3 (1972):63-88; A. Gordon Darroch and Michael D. Ornstein, "Ethnicity and Occupational Structure in Canada in 1871: The Vertical Mosaic in Historical Perspective," Canadian Historical Review 61 (1980):305-333.

Unlike the 'firstcomers,' only one lawyer had grown up in a home headed by a medical practitioner. Five lawyers out of six from clerical families had fathers who were Church of England clergymen, where the experience of the manse emphasized the prestigious advantages of membership in the learned professions, while simultaneously underscoring the normally less satisfactory pecuniary ones.[32] Choosing the law instead of following their fathers into the pulpit illustrated a socio-economic shift in North America during the latter part of the nineteenth century; a shift which Gerald Gawalt suggests was "when law replaced religion as the controlling element in American society."[33] Three lawyers, sons of military officers, were from families headed by fathers acquainted with the dictates of authoritarian and bureaucratic organizations. Not counting the two lawyers whose fathers are listed as politicians, the remainder were products of agricultural or commercial ventures: four were farmers, four merchants, two mill owners and one a land speculator. A fear of failure and a deeper sense of insecurity was the dominant tone among Canada's commercial entrepreneurial class as frequent business failures produced many lawsuits. According to Michael Katz, who studied Hamilton, "the amount of litigation occasioned by commercial disputes, nonpayment of debts, and the winding up of failed businesses must have been enormous."[34] Surely, male progeny pursuing careers as lawyers where greater security might be achieved would have been encouraged to do so by fathers subject to the vagaries of the marketplace. As with the firstcomers, one can conclude from the results of intergenerational occupational mobility, that in most cases, maintenance or improvement was achieved and the much dreaded "downward mobility"[35] was prevented by adopting law as an occupation.

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[29] Henry James Guest, "Reluctant Politician: A Biography of Sir Hugh John Macdonald," (M.A. thesis, University of Manitoba, 1973) elaborates this theme.

[30] According to Peter B. Waite, he was very adept at promoting "Tupperdom--that is, his family relations--and he did so in a barefaced fashion that made others blush for him" (The Man from Halifax [Toronto, 1985], p. 175).

[31] For example, Hugh John Macdonald was associated with his father's Toronto firm of Macdonald, Paton and Macdonald before moving to Winnipeg in 1882.

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[32] Calhoun, Professional Lives and Reader, Professional Men both point out the professional behavior of clergy in established churches.

[33] Introduction to The New High Priests, p. vii.

[34] Michael B. Katz, "The Entrepreneurial Class in a Canadian City: The Mid-Nineteenth Century," Interpreting Canada's Past, vol. 1: Before Confederation, ed. J. M. Bumsted (Toronto, 1986), pp. 341-42.

There were some notable changes in the structure of educational backgrounds as well. That lawyers received their pre-law education outside Manitoba had not changed. G. F. Munroe, who grew up in Kildonan and was educated at St. John's College and graduated from Manitoba College with a B.A. in 1881, was the single exception. What had changed noticeably was that the preparatory colleges and universities attended were preponderantly British or Protestant in orientation. Only three lawyers in the new prominent grouping were products of the classical colleges of French-Catholic Quebec. James Emile Pierre Prendergast, for example, who was educated at the Quebec Seminary and awarded a B.A.(1878) and LL.B.(1881) from Laval University, was among a minority in terms of educational experience. While an only slightly higher percentage of newcomers (73.01%) were college educated compared to the firstcomers (69.50%), the University of Toronto and Trinity College in Toronto, Victoria College in Cobourg, McGill University in Montreal and Bishop's College in Lennoxville were listed most often as alma maters. As important, perhaps, as the undergraduate or graduate (seven lawyers had earned M.A. degrees) experiences of lawyers, was the quality of their earlier experiences. Colin Campbell, who did well academically in Oakville Collegiate High School,[36] did not enjoy the natural advantages of being a member of an old boys network, as was the case for Manitoba lawyers J. A. M. Aikins, Thomas Mayne Daly and William Johnson Tupper, who all attended Upper Canada College and were familiar in the company of Canada's social and economic elite.[37]

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[35] Ibid., p. 331.

Apart from the eleven lawyers who articled with firms in Winnipeg before being called to the bar in Manitoba, the vast majority (46 of 65) of Manitoba's prominent newcomers received their legal education under the auspices of the Law Society of Upper Canada.[38] A five year system of pure apprenticeship or articles was the norm.[39] Several attempts were made by the Society to provide concurrent voluntary lectures at Osgoode Hall in real property, jurisprudence, commercial and criminal law, but attendance at lectures by Toronto-based students was indifferent and difficult for those residing outside the city. The benchers of the Law Society of Upper Canada consistently held to the view that the best education for the law was practical training attained on-the-job and they were unwilling to relinquish control of that process to university-based legal scholars who were not practitioners of the profession. The society organized entrance exams,[40] supervised the arrangement of articles, required students-at-law to 'keep terms'[41] at Osgoode Hall, intermittently offered lectures for students, and administered bar exams. To supplement their strictly practical training, students themselves organized special lectures and moot courts with the blessing of the

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[36] P.A.M., MG14 B21, Colin Campbell Papers, Box # 1, Certificate: H.S. & Collegiate Institutes of Ontario, Education Department, 18 July 1876.

[37] See A. H. Young, ed., The Roll of Pupils of Upper Canada College, Toronto, January, 1830 to June, 1916 (Kingston, 1917); J. D. Purdy, "The English Public School Tradition in Nineteenth-Century Ontario," Aspects of Nineteenth-Century Ontario, eds. F. H. Armstrong, H. A. Stevenson and J. D. Wilson (Toronto, 1974). Jean Barman, Growing up British in British Columbia Boys in Private School (Vancouver, 1984), p. 166 emphasizes the importance of an education which stressed rules and character building as good training for the legal profession.

[38] See Curtis Cole, "'A Hand to Shake the Tree of Knowledge': Legal Education in Ontario, 1871-1889," Interchange 17, no. 3 (Autumn 1986):15-27; C. Ian Kyer and Jerome E. Bickenbach, Introduction to The Fiercest Debate: Cecil A. Wright, The Benchers, and Legal Education in Ontario 1923-1957 (Toronto, 1987).

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[39] After 1840 University graduates were exempted from two years of the normal five year apprenticeship. For non-graduates the first two years often involved menial office work followed by three years of concurrent articles and infrequent lectures.

[40] P.A.M., MG14 B21, Colin Campbell Papers, Box #1 contains a copy of an exam administered in 1876, Trinity Term. See Appendix 2.

[41] Between 1828 and 1871, during articles, students were expected to attend sittings of the superior courts of Toronto for four judicial sittings and to listen, take notes and otherwise carefully observe lawyers arguments and judges decisions. Term-keeping was the Upper Canadian equivalent of residence at the Inns of Court, London, England. See G. Blaine Baker, "Legal Education in Upper Canada 1785-1889: The Law Society as Educator," Essays in the History of Canadian Law, 2:86-91.

Society. Established in 1876, the Osgoode Hall Legal and Literary Society, for example, organized public-speaking opportunities and lectures given by Toronto lawyers, including J. S. Ewart, an outstanding emigrant to Manitoba.

Efforts to establish a more formal legal training to augment articling experience led to repeated attempts to establish a school of law at Osgoode Hall. Plagued by financial problems, under attendance, "skylarking"[42] and pressures applied by the out-of-town profession, the school was closed in 1878 but was revived three years later and operated with little direction until reorganized in 1889. Jealously guarding their prerogatives in legal education, the Law Society failed to cooperate with universities which were then taking steps to establish law schools.[43] Theoretical approaches to the law, which universities taught, were not thought useful by the profession. If the main thrust of legal education in Ontario was designed to enhance the practical side of the trade and to retain control of the process in the hands of the profession, a less obvious, though important, emphasis was, according to G. Blaine Baker, "always to ensure that the bar was a meritocracy, an élite, whose members were principally located in Toronto."[44]

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[42] Canada Law Journal 4 (June 1868):135.

[43] They included the University of Toronto, Queen's University, Western University (later University of Western Ontario), University of Ottawa and Victoria University.

[44] Kyer and Bickenbach, The Fiercest Debate, p. 31.

Bringing with them to Manitoba experiences drawn from their legal education, newcomers, many of whom had practiced little if at all before arriving, influenced and shaped the direction of professional training in their adopted province, where the first steps toward establishing a law school were not entertained until 1910. Only three lawyers received a portion of their legal education from a University program. Louis Coultee and James Miller each earned Bachelor of Common Law degrees from McGill and Trinity, respectively, while W. J. Tupper graduated from the Harvard Law School, where Christopher Columbus Langdell's casebook method of instruction was revolutionizing the pedagogy of law teaching.[45] Little of that revolution reached Manitoba, however.

As the profession grew in size and importance during the decade, successful and aspiring lawyers recognized that their professional image and status were enhanced by a stable marriage and household and a wife with acknowledged social skills. The sentiments that Colin Campbell had given expression to were obviously shared by others. From the biographical information available it is possible to determine the marital standing of sixty-two newcomers. Of that number, only three individuals, J. D. Cameron,[46]

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[45] See Robert Stevens, "Two Cheers for 1870: The American Law School," Perspectives in American History 5 (1971):405-548; Anthony Chase, "The Birth of the Modern Law School," American Journal of Legal History 23 (1979):329-48.

[46] For biography see W. E. Perdue, "The Late Mr. Justice Cameron," Canadian Bar Review 1 (1923):298-99.

Alexander Dawson and Lewis Wallbridge remained bachelors throughout their lives, although Isaac Campbell was fifty-five before marrying in 1908. Those who were already married before arriving in Manitoba were outnumbered by those who married subsequent to their arrival. That marriage was a state that confirmed their reliability was well understood by a large contingent of bachelor lawyers, who constantly and good-naturedly urged each other to take the matrimonial step as soon as possible. Campbell's friend, Ernest Bodwell of Ewart, Bodwell and Wilson, reviewing the facts in Campbell's case and using as his "authority" the decision of Campbell's partner, Bolster (Bolster was married shortly before), wrote a humorous but pointed factum to conclude "upon common law principles purely" that the length of Campbell's betrothal was being dragged on too long.[47]

> The great risk which A [Minnie Buck] is compelled to incur seems to weigh very strongly against B [Campbell]. The former is compelled to lose the opportunity of making much better investments, during B's protracted and in many instances altogether fruitless efforts, to accomplish his purpose in Winnipeg. In a large number of cases too A will suffer material damage by wear and tear and other deteriorations in her capital fund by reason of the length of time which must ensue before B is in position to complete.
>
> I cannot think that under these circumstances A would be compelled to remain bound to a promise exacted under pressure almost if not quite sufficient, to overpower that free exercise of the will so essential to every lasting contract. These considerations coupled with the well known variability of A's character in general strongly incline me to the opinion that the decision in Bolster's case will hereafter be followed in

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[47] P.A.M., MG14 B21, Colin Campbell Papers, Box # 1, Bodwell to Campbell, 6 October 1883.

nearly every instance. I would therefore, advise B to 'catch on' at once.

Fee $ 50.00

While the rules of courtship and marriage were gradually changing in Canada,[48] the quest for a suitable wife was an important one for both partners in the marriage. That families of wives of lawyers expected their daughters to maintain or improve their social standing in marriage is confirmed in reviewing the occupational backgrounds of their fathers, where they can be determined. Of twenty-one wives, eight were the daughters of lawyers, two of doctors, two of clergy, three of civil servants, one of a druggist and one of a member of Ottawa's lumber merchant elite. The same object was in view as young professional men chose their helpmate. In the case of several of the sons of prominent legal families in Canada, marriages were quite clearly undertaken to cement bonds between leading families. J. A. M. Aikins, himself the son of the Lieutenant Governor of Manitoba and thus a resident of government house until his marriage, married the daughter of the Lieutenant Governor of Nova Scotia. Hugh John Macdonald, the prime minister's son, widowed in 1881, was married for the second time in 1883 to Agnes Vankoughnet, whose father, Lawrence, was a loyal and highly placed civil servant in Ottawa.[49]

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[48] Ward, "Courtship: Social Space in Nineteenth-Century English Canada," pp. 35-62.

[49] Douglas Leighton, "A Victorian Civil Servant at Work: Lawrence Vankoughnet and the Canadian Indian Department, 1874-1893," As Long as the Sun Shines and Water Flows, ed. Ian Getty and Antoine Lussier (Vancouver, 1983), p. 117,

Charles Tupper's sons demonstrated the importance of political and professional elite linkages, with James marrying the daughter of Hon. Sir Thomas Galt, Chief Justice of the Court of Common Pleas of Ontario in 1880 and William marrying the daughter of Chief Justice Macdonald of Nova Scotia in 1887. Marriage was a social transaction not taken lightly when measured by the benchmarks of social and professional status.

It was in her role as the wife of a professional man that a woman could enhance her husband's career. Since the majority of the wives shared their husband's values and attitudes, those values and attitudes came to pervade their households in Winnipeg, St. Boniface, Brandon and smaller centers in Manitoba. Substantial residences situated in the right neighborhoods, usually near the Assiniboine if in Winnipeg, were already beginning to be erected in this period and were adornments for lawyers whose success was measured by the public and their peers by obvious displays of capital and prestige. For those who were able, hiring maid-servants emphasized social standing[50] and furthermore freed their wives to engage in 'calling,' which Sarah Carter has called "a central leisure activity of women of this

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although critical, refers to him as "a model Victorian civil servant."

[50] At the outset of his marriage, Colin Campbell contracted with Ellen Chapman to be their house servant. The agreement was for one year at the rate of $6 per month with one half of Chapman's fare to Winnipeg to be paid by her employer. P.A.M., MG14 C6, Minnie Campbell Papers, Box #1, Contract, 11 August 1884.

milieu."[51] She describes the process:

> 'Calling' did not always mean that one intended or expected to actually greet the hostess. In accordance with a complicated code, a woman could send any number of messages by leaving her card, or that of her husband, or both, in a certain manner. The caller might wish to convey congratulations or condolences, to maintain social relations, to expand her circle of acquaintances, or to climb the social ladder. . . . Calling served to codify social interaction, and distinguish the elite from less couth Winnipeggers.

For legal gentlemen with wives able to engage in such social niceties, the benefits were obvious.

Perhaps a product of their socio-economic or ethnic background or an indication of the relative attractiveness of entering articles, the first career choice of the majority of the cohort of newcomers was the law. For fifty-one of the sixty-five lawyers in this grouping, no pre-law employment is mentioned in the available biographical data. Among those who mentioned pre-law employment, teaching school was the most popular, with seven individuals having served as classroom instructors or administrators in Ontario schools. The pre-law experiences of two lawyers from Quebec stand in contrast. Thomas Bernier had experience as a journalist and editor of the Courier de St. Hyacinthe, while James Prendergast was employed during his law studies as the French secretary to the Spanish consulate. As one would expect, the most accomplished emigrating lawyers were also among the more senior members of the profession. Reflecting the youthfulness of the entire group, only five were Q.C.'s when they emigrated to the province. David Glass, who at age forty-two came to Manitoba to lend support to his son Chester and to found the firm of Glass & Glass, had been elected to City Council and had been Mayor of London, Ontario several times, had served as police magistrate and Judge of the Recorder's Court in London, and had been elected a Member of Parliament in both 1872 and 1873. His legal honors included a Q.C. awarded in 1876 and election as a bencher of the Law Society of Upper Canada in 1880. Lewis Wallbridge, called to the Manitoba bench at age seventy, had been Solicitor General in a ministry of the United Provinces of Canada, had been chosen Speaker during the Confederation Debates, and had been elected a Member of Parliament in 1867. He had also been a bencher of the Law Society of Upper Canada and a Q.C. since 1856.

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[51] Sarah Carter, "The Woman's Sphere: Domestic Life at Riel House and Dalnavert," Manitoba History 11 (Spring 1986):59.

Aside from David Glass, who had begun travelling to World fairs as early as New York in 1853 and who made a lifelong hobby of this, travel experience among newcomers was very limited. The same was true for legal scholarship. Louis Coutlee published a Concordance to the Code and Civil Procedure of Lower Canada in 1870 while Thomas W. Taylor and J. A. M. Aikins had once prepared and delivered lectures to law students in Ontario at Osgoode Hall. There was as yet little indication of a developing literati in Manitoba outside of the journalistic endeavors of several St. Boniface lawyers.

Among the sixty-five newcomers, the level of direct political involvement was significantly lower than it had been for the firstcomers. Not only was it now possible to choose to practice law exclusively, the decade allowed younger lawyers interested in politics to prepare more carefully the "stepping stones" required should the call of political life occur at a later date. Only seventeen of sixty-three lawyers eligible to run for electoral office did so successfully. Elected mayor of Brandon in 1882, Thomas Mayne Daly was the only member of the newcomers cohort elected a Member of Parliament from Manitoba. John Crerar,[52] Louis Prud'homme, James Miller, A. C. Killam, John Kirchhoffer, Joseph Martin, James Prendergast and Charles E. Hamilton became members of the provincial assembly before 1888, while Clifford Sifton, Joseph Martin and James Prendergast were joined by fellow Liberals C. J. Mickle, Isaac Campbell and James Fisher as they were swept into office that year with Thomas Greenway.[53] In municipal government, the pattern was much the same. The majority of lawyers who were prominent or destined to become so were not directly involved. Charles E. Hamilton, mayor of Winnipeg, Thomas Mayne Daly, mayor of Brandon, Thomas A. Bernier, mayor of St. Boniface and John Crerar, mayor of Minnedosa, and several others who served as aldermen were the exceptions. There were those, like J. A. M. Aikins, who acted as counsel for the federal Department of Justice after 1879, who did not have to build political bridges as they were already in place. For other 'newcomers' with political aspirations, the visible benefits of their political brokering activities, which were fairly evenly divided between the Conservative and Liberal parties, were in 1888 yet to be realized.

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[52] For biography see Judge S. E. Clement, "The Late John Crerar, A Pioneer Manitoban," Manitoba Bar News 7 (October 1934):50.

[53] That election and his government is treated in Joseph A. Hilts, "The Political Career of Thomas Greenway," (Ph.D. dissertation, University of Manitoba, 1974).

Unlike the firstcomers, lawyers getting established during the 1880's did so in an environment which offered many more ways of belonging. Reflecting the rapidity with which Manitobans were constructing their societal infrastructure, clubs and organizations of various kinds, in addition to being forums for making contacts of a professional or business nature, offered opportunities to demonstrate competence and provided visible extra-professional evidence of one's standing. They also offer a glimpse of the changing structure of prominence. Organized in 1874 and situated in a new building by 1881, the prestigious Manitoba Club, with a membership of 278 by 1884, was the most popular club among lawyers,[54] although the Brandon Club was important for lawyers located there. Fraternal organizations were often among the first institutions established by Canadian settlers in Manitoba because they allowed for the recreating of social relationships that were familiar, and assured a measure of mutual assistance through a relief fund. Masonry, begun in the North West in 1864, with its rich heritage of rituals and restricted membership and which required that the new member be proposed for membership by an extant member, was the first choice of lawyers in Manitoba.[55] A smaller number of lawyers chose membership in the Independent Order of Oddfellows which was organized a decade later. Again, admission procedures gave the newcomer a sense of belonging and of 'insidership,' for the candidate was accepted on a "ball Ballot," if "less than three black balls were found"[56] when balloting was completed.

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[54] Mary Lyle Benham, The Manitoba Club 100 Years (Winnipeg, 1974).

Belonging to organizations with an ethnic identification offered some lawyers another means of establishing themselves in the community. St. Boniface lawyers Thomas Bernier, James Prendergast and Louis Prud'homme were members of 'culture bearing' associations like the St. Jean Baptiste Society and St. Vincent de Paul Society.[57] On the other hand, only one lawyer in each case indicated an involvement with the St. George's Society, St. Andrew's Society and St.

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[55] William Douglas, Freemasonry in Manitoba, 1864-1925 (Winnipeg, 1925) provides an overview of the growth of the lodge and offers some insight on its operations.

[56] "Constitution of Subordinate Lodges in Manitoba," amended 1904, quoted in Patricia Jasen, "The Oddfellows in Early Calgary," Alberta History 35 (Summer 1987):9.

[57] T. A. Bernier, "Saint Vincent de Paul," Le Manitoba, 27 January 1887.

David's Society, while Nathaniel Francis Hagel[58] and James Howden were both members of the Orange Order, a fraternal lodge with much less political impact in Manitoba than in Ontario.[59]

Leadership roles in service to the community were confined mostly to involvement in the YMCA and the boards of hospitals or institutions of higher education,[60] although the coffee house movement, a temperance motivated attempt to prevent public disorder, attracted a number of adherents in Winnipeg and Brandon.[61] Early in 1883 the Manitoba Free Press described their goal: "to provide a place where young men could spend a little time in innocent recreation, in addition to supplying meals and all temperance drinks that would be needed."[62]

Athletic clubs offered both the opportunity to engage in 'manly' sports and to support their worthy endeavors as patrons. Lawyers offices frequently hosted meetings[63] even when the lawyers were not themselves engaged in contests. In January 1887 the Free Press reported "In the curling contest last evening the legal luminaries defeated the 'way backs' . . . by a score of 13 to 10."[64] John S. Ewart was skip for the lawyers, a team which combined the legal talents of two firms and including his partner, C. P. Wilson, and partners J. A. M. Aikins and W. H. Culver. Recreation was in fact regarded as important enough that leading lawyers managed to have the legal year rearranged.

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[58] For biography see Stubbs, Lawyers and Laymen.

[59] The historical geography of the order is the subject of C. J. Houston and W. J Smyth, The Sash Canada Wore (Toronto, 1980).

[60] Occasionally these efforts were unusual. A firstcomer, Sedley Blanchard, on returning from the South, was reported to have "brought back with him a couple of young alligators for the Winnipeg Zoo" (Manitoba Free Press, 11 April 1882).

[61] In Winnipeg, "The stockholders in the Manitoba Coffee House Company," met at the offices of Bain, Blanchard and Mulock. In Brandon the Sifton family were involved as well (See David Hall, Clifford Sifton, 1:24).

[62] 19 January 1883.

> The lawyers are getting up a petition to the Benchers, asking them to change the date of the legal holidays so as to exclude July and include September. The present months are July and August. They prefer to work in their offices during July and have their holidays in September, when moose-shooting and other recreations will be in order.[65]

Younger lawyers continued to participate in the more active sports, but games such as curling, which encouraged easy conversation, grew in importance, to be joined by golf the following decade.

Although their numbers allowed them to largely set the tone and structure of legal prominence during the first decade of organized law practice in Manitoba, the newcomers were not alone. A number of firstcomers were very much a part of the legal scene and assisted in delineating the parameters of legal prominence. Sedley Blanchard, taking silk two years before his death from typhoid fever in 1886, was a prime mover behind the establishment of the Winnipeg General Hospital.[66] Rice M. Howard was Inspector of Registry Offices and County Courts before he died in 1887, while Fred McKenzie, the first Manitoba lawyer awarded a Q.C. and an original Law Society Bencher, died the following year.

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[63] Notices such as the one announcing a meeting of the Winnipeg Cricket Club to be held at the offices of Ewart, Fisher and Wilson were quite common. Ibid., 9 January 1886.

[64] Ibid, 27 January 1887.

[65] Ibid., 22 April and 1 August, 1887.

In 1888, fifteen firstcomers remained in Manitoba. Of that number, four had been elevated to the bench. Joseph Dubuc and John F. Bain were puisne judges of the Court of Queen's Bench while David M. Walker and Joseph Ryan[67] were County Court judges at Brandon and Portage la Prairie. Three were active as civil servants. Felix Chenier became Examiner of Land Titles in Winnipeg after 1885 and subsequently the Deputy Registrar General. Richard Huggard was Dominion Inspector of weights and measures for the prairie region. Daniel Carey was dismissed from his position as prothonotary in 1878 by Joseph Royal, then Attorney General, for using his French skills in assize court to assist the defence as well as the crown.[68] He returned to private practice where he was joined in partnership briefly with another firstcomer, John O'Reilly. More successful in private practice than either of these men was Heber Archibald, who admiring contemporaries "considered to be a very sound lawyer."[69] Four firstcomers were active in politics. S. C. Biggs, named Q.C. in 1884, was Minister of Public Works in the Norquay government before moving to St. Paul, Minnesota in 1888.[70] Senator Marc Girard, also a cabinet minister, had experience as Provincial Secretary and Minister of Agriculture. On the federal level, Joseph Royal was a Member of Parliament from Manitoba before being appointed Lieutenant Governor of the North West Territories in 1888.[71] Arthur Wellington Ross was elected Member of Parliament after being an MPP, fortunately about the same time that his real estate fortune crumbled with him holding too much unpaid-for land. Flamboyant, reckless and intemperate as ever, Henry J. Clarke, with his brother, was heavily involved in the scrip trade, yet ironically he performed brilliantly as counsel for twenty-five of Louis

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[66] John Palmerston Robertson, ed., A Political Manual of the Northwest Territories (Winnipeg, 1887), p. 143.

[67] Philip C. Locke, "His Honor Judge Joseph Ryan," Manitoba Bar News 13 (May 1941):93-94 provides a brief overview of his career. When appointed, it seems there were some misgivings. "The profession are very much opposed to the appointment of Ryan, not from personal prejudice, but because he is no lawyer--some say he had never yet held a brief" (P.A.C., MG26 A, Macdonald Papers, C W. Allen to Macdonald, p. 141,233, 25 November 1879).

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[68] P.A.M., Executive Council Minutes, 7 February 1878.

[69] J. H. O'Donnell, Manitoba as I saw It 1869 to Date (Toronto, 1909), p. 128.

[70] Canada Law Times 3 (1883):974 reported that he was admitted to the bar of Minnesota 17 September 1888.

[71] Lewis H. Thomas, The Struggle for Responsible Government in the North-West Territories 1870-97, 2nd. ed. (Toronto, 1978), pp. 159-60.

Riel's followers in 1885.[72] Meanwhile his brother, Francis, pursued literary endeavors, editing various newspapers and collaborating with Alexander Begg in the writing of Begg's impressive yet colored three volume The History of the Northwest.

By 1888 the newcomers had reshaped the structure of legal prominence in the province. Constantly shifting partnerships, expanding occupational choices and the rapidly changing nature of legal business, however, served to underline that its structure was not fixed. What had remained constant from the previous decade was that among the leaders of the profession, derivative cultural practices and professional attitudes, combined with the imperatives of adapting to Manitoba realities, were the characteristics of shared experience. Having explored the available avenues of integration and having employed and adapted the necessary brokering mechanisms for advancement in Manitoba, the legal profession was becoming a vital community within a community.[73] Conscious of their status, leading members of the profession would face even greater challenges in the coming years, as they sought to conserve and modernize the nature of law practice and professional life, while conforming to the demands of an emerging urban and technological society.

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[72] Bob Beal and Rod Macleod, Prairie Fire (Edmonton, 1984), pp. 318-21.

[73] W. J. Goode, "Community Within a Community: The Professions," American Sociological Review 22 (1957):194-200.

CHAPTER IX

"HAND IT DOWN TO YOUR SUCCESSORS WITHOUT A STAIN," CONSERVATORS: CONSOLIDATING OCCUPATIONAL AUTONOMY AND PROMOTING AN HONORABLE IMAGE, 1888-1900

W. L. Morton's observation that in the eighteen nineties there was little that changed in the professions in Winnipeg is very much in keeping with the view that other historians have taken of late-nineteenth century Manitoba. Writing of a province which was mainly rural and in which agriculture was paramount, Morton saw trends in agriculture that had begun in the eighties continuing with few alterations during a period of sluggish population growth and settlement; still he saw "a period of growth and, above all, of consolidation."[1] Similarly, the history of the city of Winnipeg as a metropolitan center, which began with the completion of the Canadian Pacific Railway, witnessed its economic fortunes fall far short of earlier expectations, at least until after 1896. Ruben Bellan writes, "Winnipeg was made painfully aware of how its prosperity would depend upon the state of the world market for wheat, and the economic atmosphere prevailing in the world's great financial centres."[2] If growth was slow and haltingly uncertain, and consolidation the prevailing imperative of the time, nevertheless, claims Gerald Friesen, the result was the "establishment of a stable community and reasonable prosperity by 1900.[3] The same could be said of the legal profession, where growth was steady and unspectacular and the principal activities of the leading members of the legal fraternity involved the fabrication and buttressing of their occupational place in Manitoba. Such an observation, while true, belies the fact that this activity was neither simple, automatic nor unimportant.

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[1] Manitoba: A History, pp. 264 and 255.

Disillusioned by the distance between reality and the myth of the West as an "Eden,"[4] and hardened by a struggle for better terms within Confederation which saw the provincial rights issues win the day in 1888 for Thomas Greenway's Liberals, Manitobans were acquiring a distinctly provincial consciousness as the final decade of the century approached. For lawyers too, the urge to consolidate their position was compelling, to conserve not only their place in the society as leading lawyers but also their own vision of what Manitoba was to be. At the same time they were also beginning to regard themselves as westerners in a conscious fashion. For lawyers, as for the rest of the population who were emigrants, developing a sense of themselves as

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[2] Winnipeg First Century, pp. 56-57.

[3] The Canadian Prairies: A History, p. 218.

[4] Owram, Promise of Eden, Conclusion.

Manitoban depended upon making the psychological adjustments their new environment required in order to call the province home. Emotional attachments to the physical and cultural surroundings settlers knew as 'first place,' most frequently Ontario or Quebec, created a sense of homelessness, and even anomie for some, until those sentiments were mitigated by remaking their adopted community with familiar images and institutions.[5] Drawn by what was familiar, leading lawyers had joined lay Manitobans in the process of institutional development in political, economic and social spheres as well as legal ones. Often beginning with a colonist's perception that their role in the province was to replace or defend varied cultural attributes of their previous home, their assumptions changed as their knowledge and experience of this new place became greater. As they joined with other Manitobans in the consolidating of their position in Manitoba and dreamed of Manitoba's elevated place in the Dominion one day, their identification grew stronger. In other words, colonizers were becoming colonials.[6]

What set the legal community apart in this process of consolidation and accompanying identification as Manitobans, is that their profession was then working toward solidifying its autonomy and enhancing its image. At the same time, legal practitioners occupied a unique vantage point to observe, comment on and participate in the major occupational, legal, social and political issues facing Manitoba. Not all lawyers were as directly involved in the changes which occurred, nor were some of their professional concerns very different from those of their legal counterparts elsewhere in North America. Nevertheless, it would have been difficult for any of them to have escaped the realization that their experiences inside and outside the profession in Manitoba were altering them in both subtle and more obvious ways. Within the legal profession the tensions created by the adjustment left lawyers with the intertwining options of adhering to the certainties of tradition or attempting to adjust to the modern realities that change demanded. They were, in other words, called upon to be both 'Conservators' and 'Modernizers' at the same time. In blending the two experiences inside the profession, however, the former was emphasized and expressed unequivocally in Chief Justice Taylor's dictum, "hand it down to your successors without a stain."[7]

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[5] A perceptive treatment of the dissatisfaction and uneasiness born of the presence of absence is Ronald Rees, New and Naked Land Making the Prairies Home (Saskatoon, 1988), Chap. 12. Also see W. L. Morton, "Seeing an Unliterary Landscape," Mosaic: A Journal for the Comparative Study of Literature and Ideas 3, no.3 (Manitoba Centennial Issue, 1970):1-10.

[6] An example of a similar experience happening to an Ontario lawyer in Alberta is D. R. Babcock, "Autonomy and Alienation in Alberta: Premier A. C. Rutherford," Prairie Forum 6, no.2 (1981):117-28.

The concerns of leading lawyers about the integrity of their profession did not suddenly begin in 1888 nor abruptly abate in 1900. An examination of their collective activities and expressed aims to 1900, however, reveals that achieving a fuller measure of autonomy, while at the same time also protecting their sometimes tarnished image, were the important elements defining the process of professionalization within the legal community in the nineties. In the case of professional autonomy, improving the responsiveness of its governing Society, exercising control over the discipline of lawyers, narrowly and exclusively defining legal tasks, controlling numbers by restricted entry, and responding to the changes sought in legal information and education combined to demonstrate that most of the essential aspects associated with professional life were in place by 1900.[8] Calls for reform, sometimes vociferous and other times muted, occasionally placed members of the profession at odds with each other or with the Benchers, but the cleavages created were not seriously damaging. As for improving the image of the Bar, they had less success; the distance between the ideal they sought and the actual, as perceived by themselves and the public at large, remained great.

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[7] Western Law Times 1 (1891):214, Inaugural address.

The first group to feel the increasing pressure exerted by members of the profession to respond to their calls for greater occupational advantage were the Benchers of the Law Society. Until 1888 the Benchers pursued the interests of the Law Society by establishing branch law libraries in the assize court locations of Brandon and Portage la Prairie[9] and by attempting to influence the government in the selection and remuneration of judges.[10] Most of these undertakings were unnecessarily cloaked in secrecy and the Benchers lacked any real sense of accountability for their actions. Or so it seemed to a growing number of younger lawyers in the profession who began to oppose the Benchers' proposals and methods of operation. Leading the dissenting voices was newcomer, Archer Martin, a savant whose wide-ranging interests and erudition provided a focus for latent dissatisfaction and allowed him to be an effective voice for reform. Called to the bar in 1887 at the age of twenty-two, Martin later established and edited a law journal, assisted by J. T. Huggard. The Western Law Times, which operated between 1890 and 1895, provided subscribers with more up-to-date law reports than the Manitoba Reports, as well as reliable, lively, even chatty articles and reviews of general interest to the profession.[11] More importantly, its pages were replete with incisive comments on the propriety of various professional actions. A self-appointed and uncompromising guardian of the conscience of the legal profession, Martin, as might be expected of a brilliant, opinionated and impatient youth, levelled some of the first and loudest reproof against the actions of the Benchers of The Law Society.[12]

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[8] Curtis Cole, "'A Learned and Honorable Body': The Professionalization of the Ontario Bar, 1867-1929," (Ph.D. dissertation, University of Western Ontario, 1987) examines these areas of institutional reform in some detail. The formation of Bar Associations is often considered part of the achievement of autonomy. In Manitoba, the Winnipeg Bar Association was not formed until 1906 and the Manitoba Bar Association until 1911.

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[9] A.W.C.L.H., A2793, Law Society Minutes, 4 October 1887.

[10] Ibid., 19 April 1887, 1 March and 7 December 1888 and 28 January 1889.

[11] He edited the Times until 1894, when he moved to Victoria on his appointment to the Supreme Court of British Columbia, trial division. In 1937 he became Chief Justice

Martin and other young lawyers objected strenuously in the Spring of 1889 when the Benchers of The Law Society proposed that increased membership fees be used to assist the government in building a new Court House in Winnipeg. To counter that intent, Lewis G. McPhillips, a junior barrister who shortly afterward moved to Vancouver, introduced a motion favoring a substantial reduction in fees. His motion to reduce the amount to $7.50 per annum, reputedly the work of Archer Martin,[13] was defeated. Subsequent motions and amendments followed in a lengthy bar meeting which pitted "certain benighted Benchers,"[14] claimed Martin, against those proposing the reduction and who represented the real interests of the profession. Also at issue was the wish of the Benchers to maintain intact a large reserve fund of $20,000, "for the benefit of

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of British Columbia. His most notable publication concerning Manitoba was The Hudson's Bay Company Land Tenures (1898).

[12] He did so even though the publication was supported financially by the Law Society.

[13] Manitoba Free Press, 1 May 1889.

[14] Western Law Times, 1 (1890):60.

posterity,"[15] by imposing tariffs high enough to do so. If their income was reduced, they argued, the size of the fund would also shrink. Untroubled by such a prospect, Martin and others replied, "if necessary, the fund could be reinvested at a higher rate of interest" to make up for the lost income, but "even if the fund were encroached upon, it did not matter, as it should be used," in order to benefit the profession as needs arose instead of being "uselessly garnered for posterity."[16] A more telling point, perhaps, was the observation made that "it would be just as reasonable to ask the medical profession to build a hospital, as to require the Bar to build a court house."[17] Perhaps even more to the point was an observation made in the Free Press that the crux of the matter was whether the discretion of the Benchers or the wishes of the profession at large should decide such matters.[18] Obviously gratified that his actions were justified, Martin reported later that even with the reduction in fees finally agreed upon,[19] the "lugubrious prophecies"[20] of a serious deficit by the immovable Benchers did not materialize, and Martin seemed satisfied that due to the election of several new Benchers in 1889, "there is now a disposition manifested on the part of the governing body to more carefully consider the interests of the profession."[21]

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[15] Manitoba Free Press, 1 May 1889.

[16] Western Law Times 1 (1890):60.

[17] Ibid.

[18] 1 May 1889.

[19] The amount was $12.50 per annum.

[20] Western Law Times 1 (1890):60.

The disposition of the governing body may have been partly sobered as well by another incident which occurred early in 1890. In a well-attended bar meeting at the Winnipeg court house, during which Martin served as secretary, a resolution was presented to reduce the term of benchership from three years to one.[22] The lawyers proposing the measure argued that the Benchers were far too unresponsive to the bar. Five of the benchers took umbrage at this attack on the prestige of the office they held, and inferring that the resolution's passage was a want of confidence they resigned. Because the action of the Benchers blocked further attempts at needed reforms, Martin, who took it upon himself to speak for the whole profession, was far from satisfied: "We are not favorably impressed by such petulant actions, and it would be a matter of small regret with us if some of these gentlemen . . . were to permanently remain in their voluntary retirement."[23] Believing that the issues facing the profession were too important to be left entirely to the judgment of Benchers alone, Martin and others were in fact calling for the Society to be more democratic in its decision-making.

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[21] Ibid., p. 61.

[22] Gibson, Substantial Justice, pp. 169-70.

[23] Western Law Times 1 (1890):12.

> There are matters more deserving of the grave attention of these legal representatives than farcical endeavors to preserve an excess of dignity which can only be attended by consequences like those which resulted from the well meant but disastrous efforts of the humane she-elephant who undertook to hatch out the eggs of a deceased jungle fowl.[24]

In a similar vein later that year, the secrecy of the Benchers again came under attack. In a meeting of the Bar chaired by J. A. M. Aikins, President of the Society, Martin and McPhillips introduced and seconded a motion that called for all the papers and proceedings of the Society except sealed tenders to be open to member's scrutiny "without any reservation whatever."[25] Aikins argued against having the proceedings entirely open and reasoned that members must show cause why they required access. One of the dissenters countered that quite the opposite was true, and that "the onus lay on the governing body" to demonstrate "by what authority they retained such papers from the members."[26] With an eye to the "injurious impression" created in the publics' mind by having the Law Society acting secretively and fighting amongst themselves, Attorney-General Joseph Martin spoke forcefully in favor of full disclosure, claiming, moreover, that withholding information from its members was "quite unjustifiable." Underscoring what was really at stake in these episodes,

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[24] Ibid., p. 13.

[25] The resolution was reported in Western Law Times 1 (1891):211 and 1 (1890):183-86.

[26] Ibid., p. 213.

Joseph Martin was reported by the Western Law Times to have commented "that the impression had existed till quite recently among the Benchers that they were above and not open to criticism."[27] While the principles at issue in this debate would escape none who were present, the dissenters were far too sanguine if they thought that their position had entirely won the day, for when the question was called, the motion lost by two votes out of twenty-eight cast.[28] By the year end, however, a similar motion had passed.[29] In the struggle to improve the responsibility of the profession, the result this time favored change over tradition.

In 1891 the release of financial statements concerning the Benchers' management of the Society's reserve fund gave Martin an opportunity to return to a favorite theme. Complaining that a rate of interest of 4% paid by the Imperial Bank was far too low a return on the investment, Martin pointed out that had the fund been re-invested at double the interest rate two years before, "in pursuance of the resolutions of the Bar then passed,"[30] the Society would have saved $1,600. Taking some obvious delight in the fact that the Benchers were then about to follow his suggestion,

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[27] Ibid.

[28] The vote of the Benchers was also split. In favor of the motion were the Attorney General and Mr. Nugent. Against were Messrs. Aikins, Kennedy, Campbell and Perdue.

[29] A.W.C.L.H., A2793, Law Society Minutes, 19 December 1890.

[30] Western Law Times 2 (1891):16.

Martin reminded the Society that the reason for establishing the fund in the first place was to be able to "encroach" upon it in times of need, especially to improve the law library. Taking aim, he wrote, the "point has been quite overlooked by one or two members of the Society who talk glibly about 'keeping the fund intact.'"[31]

Archer Martin was not prepared to allow the issue of fee increases to die either. In a harsh personal attack upon a fellow member of the Bar, Martin revealed part of the reason for a latent resentment about this matter held by the more recent arrivals in the province, like himself. Apparently Hector Howell, a leading litigator,[32] had quite publicly taken the view that fees ought to be retained at the previously higher level. Martin was vehemently opposed.

> Mr. Howell is not a good champion for this view. He came here and was admitted to the Bar in the days of cheap fees, paying only $90.00 into the Law Society, while those gentlemen who came shortly after him, subsequent to Sep. 10, 1881, found the fees raised, and had to pay $250.00.[33]

To drive home his point, Martin continued:

> It is a startling fact that the briefless barrister called to the Bar one day, has had to pay only some thirty dollars less than has Mr. Howell during the whole twelve years he has been at the Bar of this Province, not to speak of the reports to the value of $45.00 which he has had free, but the student has not had, or even to refer to the many hundred dollars counsel fees that have been paid Mr. Howell by the Law Society during that

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[31] Ibid., p. 17.

[32] J. S. Ewart had once remarked when editing the Manitoba Law Journal that based on courtroom appearances alone, Hector M. Howell should qualify for a Q.C.

[33] Western Law Times 2 (1891):18.

> time. He can well afford to stand by the high fee system, it has stood by him.

Early the next year Martin reminded his readers that the opportunity to remedy the problem of unresponsive Benchers was at hand, as the triennial election was approaching. He encouraged reelecting favored Benchers but cautioned that "there is no question but that it is not in the best interests of the Society that some of the present representatives should be returned to office."[34] In their place, he hoped that at least two members of the junior bar would be elected, the assumption being that necessary reforms might then be effected.

It was becoming more apparent as the legal profession matured, that the accepted rules and procedures as well as the law regarding professional discipline needed to be more clearly spelled out. The first problem, as Archer Martin saw it, was that when lawyers breached their professional ethics, the investigation of the complaint was always carried out in secrecy, the offender's name normally remaining anonymous, to be released only if exonerated.[35] In the case of a guilty finding, the opposite was true; members were struck from the rolls but the law reports reported the infraction without naming the offender. In one blatant instance of this, Martin was provoked to write:

> An investigation re: attorney, in a very notorious matter, was recently held by the Law Society. As a

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[34] Ibid., 3 (1892):25.

[35] Gibson, Substantial Justice, p. 171.

> result, the Law Society issued a rule calling upon the attorney to answer certain questions. The rule was discharged, on counsel for the attorney taking the objection that the affidavits filed by the Law Society disclosed a criminal offence, in this instance, compounding a felony.[36]

When no notice of this proceeding appeared in any newspaper, Martin wrote, "We have no tolerance for the noxious policy of keeping the names of erring attorneys from the public."[37] "Disreputable practitioners" enjoying a privilege not available to the public in general, was not the only problem.

Under the Act creating the Law Society of Manitoba,[38] something of an unfortunate anomaly had been created in the provision for disbarring. The Benchers of the Law Society were empowered to strike any barrister from the rolls or suspend any attorney from practice for nonpayment of fees and to reinstate them by whatever terms they wished,[39] but in the case of a more serious wrongdoing, the authority was confined to the Justices of the Court of Queen's Bench.[40] The specific section of the legislation read:

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[36] Western Law Times 1 (1890):32.

[37] Ibid., p. 33. In what may have been a retaliatory measure by the Benchers, Lewis McPhillips, who was active in opposing the Benchers, also came under discipline. See 6 Manitoba Reports, re: McPhillips, p. 108.

[38] Statutes of Manitoba, 1871, 34 Victoria, c.10.

[39] Western Law Times 2 (1891):150.

[40] Section 77 of the Law Society Act was repealed in 1892. The substitute provision is found in An Act to Amend the Law Society Act, section 4. See Revised Statutes of Manitoba, 1892. Changes explained in Western Law Times 2 (1892):46-47.

> It shall be lawful for the Court of Queen's Bench, upon rule nisi, to hear and determine any complaint that may be made against any member of the Law Society in the discharge of his duties as barrister or an attorney-at-law, and such member of the Law Society so offended may, according to the gravity of the offence, and in the discretion of the said Court of Queen's Bench, be either suspended from practising law in any Court of this Province, or struck off the roll and disabled from practising either as an attorney or solicitor or barrister in any of the said Courts.

Its impact was unintentionally turbid. The legislation drew distinctions between barristers and solicitors (in Manitoba designated attorneys, as well) and appeared to leave to judges considerable discretionary latitude in applying separate provisions to barristers and solicitors. In practice, however, lawyers in Manitoba made very few distinctions themselves between what, in other jurisdictions, were clearly separately functioning entities. A minority of lawyers belonged to only one, but the vast majority had signed both the barrister and attorney rolls[41] and practiced in both capacities.

The trouble began with a case of misconduct involving Portage la Prairie lawyer John Boultbee who was found guilty of absconding with a client's money. Its internal investigation complete, the Law Society then took action to disbar Boultbee by retaining counsel, one of whom was H. M. Howell,[42] to appear before the Court of Queen's Bench, seeking an order to strike Boultbee's name from the rolls. Based on their interpretation of the appropriate section of the Act, the justices, especially Mr. Justice Bain, decided that since the offence occurred in his capacity as a solicitor, he would be disqualified from practicing only as a solicitor, and allowed to continue "in the discharge of his duties as a barrister."[43] The distinction drawn in the case drew less attention at the time than did the question of etiquette. Apparently, Howell and the accused attorney in question appeared together in another case while the application to strike him from the rolls was pending, moving the Western Law Times editor, who noted the inherent conflict of interest, to write, "this is more than unseemly."[44] In 1891 Boultbee was in British Columbia seeking business and boldly advertising his services as both barrister and attorney in good standing in Manitoba. Writing to draw the attention of the editors of the Vancouver Daily World to the deception, Martin wrote, "we wonder that he has the impudent effrontery to even refer to his disgraceful career in Manitoba."[45]

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[41] Impression drawn by examining the Rolls of Attorneys and Barristers.

[42] Western Law Times 1 (1890):166.

An application by the Law Society for a rule to strike lawyer R. L. Ashbaugh from the rolls began 1 April 1891. Ashbaugh had been found by the Society to have been extortionate in a criminal proceeding for attempted murder.[46] Appearing for the Law Society were Mr. Howell, Q.C. and Mr. Hagel, Q.C. Because the charge was challenged and denied, Chief Justice Taylor ordered the prothonotary, Mr. Walker, to continue with the enquiry and report his finding. On the facts presented, Walker recommended in his report that Ashbaugh be struck from the rolls of barristers and attorneys, but the lawyers acting for Ashbaugh appealed.[47] Reserving judgment until late in June, Chief Justice Taylor, following the decision set out in the Boultbee case, announced that because Ashbaugh was at the time acting in his capacity as an attorney, he could not be struck from the rolls as a barrister.[48] Following that ruling, the Law Society proceeded to have him removed from the attorney rolls alone.[49] Arguing that the judiciary, without the capacity to disbar barristers because it lacked the authority, had a detrimental effect on the reputation of the profession in the public's mind[50] and that statutory provision had been misinterpreted by the court,[51] the Western Law Times concluded,

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[43] 6 Manitoba Reports, re: John Boultbee, p. 27.

[44] Western Law Times 1 (1890):167.

[45] Ibid., 2 (1891):23.

> with no little shame that there now stand on the rolls of the Law Society as barristers the names of two men,

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[46] Manitoba Free Press, 1 April 1891.

[47] Ibid.

[48] Ibid., 25 June 1891.

[49] Ibid., 16 July 1891.

[50] Western Law Times 2 (1891):82-83; "The Disbarring of Barristers," pp. 127-136.

[51] Ibid., pp. 152-55.

> the first whom is an absconder and a misappropriator of client's funds, for which he has been struck off the roll of solicitors, and the second has recently been found guilty by the court of extorting moneys, and compounding a felony for $500 in his capacity as a solicitor, and for such acts likewise struck off the roll.[52]

The embarrassment Boultbee and Ashbaugh caused the members of the profession was palliated after several years, as both members were fully reinstated, the former after satisfying a restitution condition and the latter unconditionally.[53]

Milder forms of admonition were reserved for practices thought to be 'unbecoming' in the profession. While most leading lawyers in the province had already abandoned any active form of advertising to attract clientele, there were indications that not everyone was prepared to do without promoting themselves. Martin frequently used the pages of the Western Law Times to warn practitioners about tawdry advertising practices and to remind readers of their duty to the profession. When an enterprising pamphlet advertiser began soliciting around Winnipeg for portraits of the bar to appear in his publication at discount rates, Martin was quick to point out what the appropriate response for members of the bar should be.

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[52] Ibid., p. 155. In 1892 legislation was passed to overcome the problem. Under the amendment, the Queen's Bench could disqualify them both as solicitors and as barristers, the circumstances of the offence notwithstanding.

[53] A.W.C.L.H., A2793, Law Society Minutes, 6 February 1894 and 5 February 1895. While members of the profession might be able to forgive one of their own, they acted quickly when their own office employees were guilty of wrongdoing. For example, in 1894 the firm of Hough and Campbell openly charged their bookkeeper in magistrate's court with having embezzled money on deposit in the firm's account (Manitoba Free Press, 3 January 1894).

> He [the pamphleteer] has approached many of the most respectable members of the profession with his seductive enterprise, but they have refused to listen to his blandishments, having enough self-respect to prevent their stooping to this most reprehensible form of touting.[54]

In seeking to help define the limits of acceptability for Canada, Martin turned to both the British and American experience for examples. In England, professional etiquette for prominent barristers vigorously resisted advertising as the height of impudent conduct, while the universal practices of American lawyers seemed to represent the other extreme. Representing a Canadian viewpoint, Martin thought the American practices of engraving names and occupation on personalized notepaper and the placing of simple legal cards in local newspapers and leading law lists, since they were not "sensational,"[55] were proper. Quoting a recent Canada Law Times article which expressed alarm at the growing sensationalism in professional advertising and noting the potentially deleterious impact, Martin outlined practices which were simply in bad taste. He openly condemned "The unusual practise [*sic*], adopted by a few solicitors, of displaying a string of solicitorships on their letterhead," but he was also quick to point out that "we are glad to say that it is of a very limited extent indeed." To demonstrate what was meant by advertising of the "sensational" variety, Martin provided readers with a sample from Calgary, North-West Territories:

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[54] 2 (1891):103.

[55] Ibid., 1 (1890):187.

> W. L. BERNARD,
>
> Barrister-at-Law, Advocate, solicitor,
> Conveyancer, Notary Public,
> Actuary, etc.
>
> ---
>
> Registrar of Births, Marriages and Deaths
> Issuer of Marriage Licenses
>
> ---
>
> Probate and English business transacted. Loans negotiated

Adding a comical touch to his ridicule, Martin asked, "Would it be inopportune to add 'Mangling done here'?"[56]

In an earlier issue that year, readers were reminded that their advertising must not be misleading in any way. Apparently, J. N. Kirchoffer, a Brandon lawyer, had been advertising under the name of "Kirchoffer Bros.," as solicitors doing business in Brandon and Souris, when as Martin remonstrated, his brother was not a lawyer.[57] Such reminders and the even stronger, yet often silent, exclusionary impact of peer disapproval helped keep improper advertising within limits. Similar warnings continued to appear in the pages of the Western Law Times[58] until in 1894 a different type of "startling" advertisement was highlighted. When a Gretna, Manitoba resident, Heinrich Klossen, published the following advertisement in the Free Press, 27 September 1893, something more than "touting" was held to be at stake.

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[56] Ibid., p. 188.

[57] Ibid., p. 48.

[58] Ibid., 2 (1891):59-60 and 5 (1894):14.

> TO WHOM IT MAY CONCERN
>
> Public notice is hereby given that a promissary [sic] note made by me in favor of one J. J. Connacher, dated the twelfth day of April, 1893, for the sum of one hundred and sixty dollars, and due November first after date, was obtained from me by the said Connacher without consideration and by false pretense, and that payment thereof will be refused.
>
> HEINRICH KLOSSEN.[59]

It was urged that such a public attack upon Connacher, a lawyer, should not go unchallenged nor should the solicitor for Mr. Klossen, who placed the ad, be allowed to go unpunished. "If we knew his name we would let his brother practitioners know about it,"[60] wrote Martin.

Opinion-shapers like Martin could shame fellow lawyers who were guilty of unprofessional conduct or urge the Benchers to do their duty in the matter, but the encroachment of quasi-legal agents or conveyancers with dubious authorization was a threat to the entire bar's livelihood as well as their image. The response to such interlopers was uncomplaisantly brusque. Commenting on a bill introduced in the legislature in 1891 to secure more stringent regulation of conveyancers, Martin was not amused by the American-like Jacksonian response of "gifted" legislators to the problem.

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[59] The advertisement was quoted in Ibid., 4 (1893):125.

[60] Ibid., 5 (1894):3.

> The knowing and sapient backwoodsman, imagining that he perceives the fell design of the astute lawyer, craftily proceeds forthwith to oppose the measure . . . and unconsciously plays into the hands of his dearest foe, the irresponsible conveyancer.[61]

By not stamping out the menace, Martin argued, legislators did everyone a disservice, as the shoddy work of licensed and unlicensed conveyancers produced many unnecessary lawsuits. Typically, disgruntled litigants, failing to make a proper distinction between professional services and non-professional services, blamed lawyers when matters went awry. Angered by the unfairness of this, he wrote, the "niggardly citizen, who, from parsimonious motives, employs an irresponsible cheap-jack, richly merits the occasional law-suit which he gets with the cheap and carelessly drawn document." Martin seemed to be angered even more by a prominent unnamed Q.C. and MPP who was present in the legislative assembly when the profession was attacked, but did not respond to the remarks of A. F. Martin, MPP, who stated "That a man with the least grain of brains could learn conveyancing in six months, and all the better if not with a lawyer."[62]

In spite of the representations made by the Benchers on the matter to Attorney-General Joseph Martin, the government continued to grant licenses to conveyancers.[63] Recognizing the unusual circumstances earlier in the province's history which made their services expedient, Archer Martin argued, the "usefulness of the licensed conveyancer, if he ever had any, has gone."[64] He urged putting a stop to this odious "medium for political patronage," since rural communities were already well supplied with them and in Winnipeg there was, he opined, "no necessity for them at all." Finding their bold invasion of the Land Titles office to be "detrimental of the regular practitioner," since conveyancers had "no rights in the Land Titles office," Martin berated the Law Society for not protecting its own members.[65]

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[61] Ibid., 1 (1890):37.

[62] Ibid., pp. 37-38.

An example of the kind of intrusions that Martin was disdainfully objecting to appeared regularly in the Free Press in 1890:

> H. A. Jukes & Co.,
> Real Estate Brokers and General Agents.
> Office: 313 Main St.,
> adjoining Potter House Block, Winnipeg, Man.
> P. O. Box 326.
>
> H. A. JUKES, for the past 5 years draftsman in the Land Titles' Office, has opened an office at 313 Main St., next Potter House Block, as a real estate and general agent. Torrens Titles procured for holders of tax deeds; applicants for Torrens Titles will find it to their advantage to employ me, as I am thoroughly familiar with the routine work in the Land Titles' Office, and am expert in all matters pertaining to city

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[63] Martin claimed there were five that year. Western Law Times 1 (1890):124.

[64] Ibid.

[65] And again in 1894. Western Law Times 5 (1894):15.

> titles and city surveys. Any work intrusted [sic] to me by solicitors or others will be promptly attended to. Call and see my lists of city properties and farm lands, and leave all yours for sale. P.O. Box 326.

Scornful of Jukes' bold assertion of privileges and competence, Martin first pointed out that he had no rights to procure Torrens Titles or collect fees for such services, since this was "Attorney's work beyond question."[66] It seemed most unlikely to Martin that any solicitor would "see fit to entrust any work of this nature in the Land Titles Office to this modest real estate agent," a mere draftsman. But just in case anyone in the profession was tempted to hire Jukes, Martin reminded them that "by so doing they render themselves to be struck off the rolls, and 'the unqualified person' to be committed to the common jail for one year."[67] Martin kept up his attacks. The following year when the Provincial Secretary supplied a list of recognized conveyancers, he repeated his view that "there is no need at all for the extension of this list" and that "the act should be appealed."[68] In spite of these objections, appointments continued. When one was made at Boissevain, where a solicitor was already resident, Martin fired his salvo directly at the Attorney-General, who, he felt "should see to it that the interests of the legal profession are protected."[69] But for the office of Attorney-General, the demands of political patronage remained more compelling.[70]

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[66] Ibid., 1 (1890):168.

[67] Ibid., p. 169.

[68] There were twenty-three names on the list, with about half appointed in 1887 and the remainder very recently. Ibid., 2 (1891):104.

Many lawyers were involved in the business of debt collection for their clients, especially in instances requiring recourse to the courts. However, the minutes of the Law Society do not contain examples of concern over private or unprofessional debt collectors infringing upon the territory of lawyers, as they do in the case of land conveyancers. While lawyers as a professional body took no formal action against them, Martin cited examples in the pages of the Western Law Times of the legal complications that could arise if businessmen chose to employ unprofessional debt collectors.[71] When companies in that business advertised, and by implication, presented the view that they were more 'efficient' than lawyers, Martin's response suggests some degree of uneasiness about their presence. When a particularly offensive ad appeared in a Winnipeg newspaper, he published a copy of it for his readers.[72]

> A TERROR TO DEAD-BEATS.
>
> THE EVER-PERPLEXING PROBLEM OF MAKING COLLECTIONS PERMANENTLY SOLVED.
>
> The Consolidated Adjustment Co., of Chicago, whose travelling representatives have been interviewing the

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[69] Ibid., p. 124.

[70] Ibid., pp. 199 and 145.

[71] Ibid., 3 (1892):108-9.

[72] Ibid.

> prominent business and professional men of this city for the past month, promises to bring consternation to that numerous class of people who contract bills with the intention of never paying them unless forced to do so. Their methods, while complying strictly with all the provisions of the constitution of the United States as well as Canada, all the postal laws and regulations of this country and the United States, and the statutes of the various provinces and states in which they do business, promise to reform or ostracise and banish that class of human leeches that afflict every business community, and are a burden, a nuisance, and often the ruin of merchants doing a credit busineess [sic]. Their work here in the past few weeks, unlike that of similar institutions, has been marvellous and most satisfactory to our merchants.
>
> Accounts, notes and judgments that had grown musty and yellow with age, and had withstood all efforts of the collector, constable and sheriff for years, have been through through [sic] the medium of this agency, converted into new, crisp bank notes.

Illegitimate competition in the field of debt collection was less of a threat, it seems, than from officials acting in other capacities who were also performing legal tasks. The professional did not hesitate to prosecute in such cases.[73] While not wishing to paint all county court clerks with the same brush, Martin felt it necessary in 1891 to remind them that they must observe statutory provisions and "that no secret instruments or changing commissions on moneys recovered, or similar dishonest practices, will be tolerated."[74] Two years later the County Court Clerk of Beautiful Plains and his assistant, who were using the letterhead of the county offices to advertise auxiliary services, were exposed by Martin.

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[73] For example, see A.W.C.L.H., A2793, Law Society Minutes, 14 July 1891. "Letter read from Mr. W. J. Manbey, dated 3 June 1891, with regard to a person in his neighborhood illegally acting as a conveyancer. Ordered that the secretary write Mr. Manbey that if he will undertake to prosecute the matter the Society will pay any reasonable expenses, not exceeding the sum of $30."

[74] Western Law Times 2 (1891):161.

> That institution is apparently run as a partnership concern, a sort of adjunct to a real estate business and affidavit-swearing-shop, at a cash basis, doubtless. What a charming combination of offices! You can, by the agency of this obliging firm, unload your swamp claim on the Eastern "tenderfoot," mortgage the hereditary homestead to "headoff" the seductive machine agent and beat the country store-keeper, sue the aforesaid tenderfoot for the balance of the purchase money, and, finally, to bolster up your character after these little transactions, make your own affidavit before these guardians of our laws to the effect that you are an honest man![75]

Sarcasm aside, violations of the terms of the Land Registration Amendment Act (1883) were taken seriously.[76]

In maintaining vigilance over the standards of entry into the profession, prominent lawyers were not operating from unselfish motives. Nevertheless, their concerns over the integrity of the entire legal community were well-placed in the face of incompetence which might reflect inadvertently upon them. A case in point occurred in 1890 when a person claiming to be an English Solicitor was unable to perform satisfactorily on the examination for attorneys which required foreign attorneys to pass a test on local statutes, yet was sworn in because of the alleged influence of several supportive benchers. His short-lived disastrous career and departure was noted. The Western Law Times carried the following item from the Deloraine Times,

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[75] Ibid., 3 (1892):94.

[76] Statutes of Manitoba, 1883, 46 Victoria, c.6, s.23.

28 August 1890.

> The effects of H. Windybank, a solicitor, who has removed himself to a more congenial place, leaving mourning creditors behind, were sold out by the sheriff today (Thursday). There was lots of fun, when 'Windy's' collars and cuffs were put up, his shirts, and even his patent boots.[77]

In most cases where regrettable lapses in upholding standards of entry into the profession were noted, the concern was as much directed at the Benchers for their non-vigilance, as at the seriousness of the infraction. When it was learned that articling clerks in the Attorney-General's department were "drawing living and liberal salaries,"[78] Martin reflected the view of many in the profession that compared to the situation faced by articling clerks in regular law offices who were paid much less, this was unfair. It was also against the rule that "articled clerks shall carry on in business or employment." The measures taken, if any, to remedy this shortcoming remain obscure, but the example is typical of the increasing focus of attention that questions of entry into the profession and standards of practice were receiving.

While Martin was an ardent supporter of upholding rigorous standards of admission, he was opposed to the stranglehold the provinces had in regulating membership of the Bar and officials of the courts. Because of this, lawyers were prevented from appearing unless they belonged to the Bar of the province in which the court was held. Likely with little support for his view, Martin called for a "Dominion bar instead of a local one," in which there would be "a complete interchange of the right of counsel to be heard in any province of the Dominion."[79] Martin was equally ready, however, to defend provincial standards when they seemed to be called into question. In 1891, in response to criticisms levelled against a plan to amalgamate solicitors and barristers in Australia, Martin wrote:

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[77] 1 (1890):122.

[78] Ibid., 3 (1892):86.

> we believe that the state of affairs which admits of a barrister being a solicitor at the same time, but not necessarily so, and so act in both branches of the profession, is far more applicable to colonial life, and life in new countries, than keeping the professions apart.[80]

While the leaders of the profession were ever vigilant about the problem posed by various competitors outside of the profession, there does not appear to have been a commensurate concern over increased competition or declining standards caused by growth within the profession, although the Benchers spent increasing amounts of time responding to lay complaints about their members.[81] An examination of the records of the Law Society during this period does not reveal any real sense that it was thought desirable that the rate of growth of the profession be matched to the growth of the population in general. Reflecting the public's latent distrust of the professions, the issue of over-crowding was more likely to be raised by the newspapers,[82] yet even they were prepared to concede that Manitoba would always openly welcome the best and the brightest. In 1899 the editors of the Free Press wrote, "it is becoming increasingly true in professional life that none but the fittest can survive," but they also felt compelled to sound a Social Darwinian warning. "There are not anywhere openings for the multitudes preparing themselves for the various professions but there will always be room and opportunity for the fittest."[83] After the efforts by the firstcomers in the early 1880's to curb the entry of newcomers from outside Manitoba to the profession failed, the members of the profession paid little apparent heed to numbers or internal growth.

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[79] Ibid., 1 (1890):171. His remarks came in response to hearing that the North West Territories bar had passed an ordinance to restrict the entry of practitioners from outside, but the ordinance was disallowed. Curiously, he thought that this was unfair and that they also ought to be able to restrict entry as did Manitoba and other provinces.

[80] Ibid., 2 (1891):136.

[81] Limiting the size of the profession seems to be a more modern problem. See Curtis Cole, "A Developmental Market: Growth Rates. Competition and Professional Standards in the Ontario Legal Profession, 1881-1936," Canada-United States Law Journal 6 (1983):125-26. On the

The spectre of unqualified agents offering legal services remained a constant external threat. A good deal

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matter of complaints, see, for example, Correspondence, A.W.C.L.H., A399, Complaint to Manitoba Law Society against Forrester, David, Barrister, Emerson, Manitoba by Jewell Burk, 1893-4; A402, Complaint to Manitoba Law Society Against Campbell and Crawford, Barristers, Winnipeg, 1890; A407, Complaint to Manitoba Law Society Against Sifton, Philip and Cameron, Barristers, Brandon, Manitoba, 1895.

[82] Manitoba Free Press, 18 and 25 April 1895.

[83] Ibid., 3 April 1899.

of energy was exerted by the Law Society in curbing unauthorized practices.[84] Curtis Cole correctly points out that in Ontario at this time the legal profession was undergoing a transformation in the style of practice which ultimately influenced attitudes of practitioners towards perceived external competitors. Throughout North America leading lawyers were serving their clients less and less in the process of litigation and were often counselling against direct challenges in the courts. Serving more as preventive technical legal counsellors advising clients to avoid legal pitfalls, rather than as litigationists seeking remedies after the fact in the court, emphasized different skills among lawyers. It also helped redefine what was meant by "legal services." Manitoba's leading lawyers were not immune to the impact of this evolutionary shift in legal style. Curtis Cole writes,

> When a lawyer's work was centered in the courts, there was little likelihood of a non-lawyer presenting a realistically competitive threat. As the lawyer's role began to change to that of a consultant in legal matters, the threat of unauthorized encroachment on his practice became greater.[85]

If the external challenge to his control of legal services was motivated by the transformation in the nature of legal services provide by the average firm and the resulting confusion over which services were strictly within the purview of lawyers to offer, the change in Manitoba, as elsewhere, was in large part initiated by businessmen who wished to avoid the nuisance of litigation. Instead they preferred to settle business disputes outside the courts, as W. H. Trueman, a Winnipeg lawyer explained, thereby shrinking "from its expense, from its delay, from its vexations, from its uncertainties and even from its publicity."[86] This shift in the organization of law practice is treated more fully in the following chapter.

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[84] Gibson, Substantial Justice, p. 173.

[85] Cole, "A Developmental Market." p. 129.

As the nature of law practice emphasized the technical aspects of advocacy and counselling, preserving the occupational advantages enjoyed by the legal profession depended increasingly upon ready and reliable information[87] upon which to advise business decision-makers. Most lawyers understood that access to and improvement of the Law Libraries' holdings was essential. Always impatient, Archer Martin was unwilling to accept the position taken by a committee of three Benchers that the limited Court House accommodations prevented any significant library expansion in Winnipeg.[88] That objection was removed with the enlargement of the Court House in 1894, but its distance from the business center of the city remained an irritation and led to consideration by the Law Society of opening a branch of the Law Library downtown. Arguing in favor, Archer Martin claimed that "If there was a small consulting library down town it would be a great convenience to the younger members of the bar, who cannot leave their office for a whole day as the case may require."[89] The Society polled its membership by sending out a circular but found them about equally divided on the issue. The costs involved and an anticipated deficit for branch libraries already operating in Brandon, Portage la Prairie and Morden, prevented taking action on the idea.[90] However, provision of adequate library resources locally were among the first concerns of auxiliary bar associations that were formed in the province,[91] which serves to illustrate the importance attached to them by lawyers who sought to keep pace with the rapidly changing expectations of legal literacy.

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[86] Writing in 1917, W. H. Trueman pointed out that commercial litigation in Manitoba had always been limited. "The Place of the Lawyer in the Business Life of Western Canada," Canada Law Times 37, no.7 (1917):93.

[87] The pervasiveness of the approaching age of information is the subject of John W. Johnson, American Legal Culture, 1908-1940 (Westport, Conn., 1981). Archer Martin was dissatisfied with access to information in Winnipeg. He wrote:

> "It really is time that a catalogue of the Law Society's Library was issued. Even a rough list of textbooks would be of great assistance to the profession, who are tired of the mutilated bookseller's list tied to a string and nailed to the wall, which at present disgraces the library" (Western Law Times 3 (1892):33).

Exercising control over the standards defining professional life was central to preserving and enhancing the autonomy of the legal community. As legal education was both the passageway to the profession and the means used to transmit the knowledge, skills, and values associated with legal practice, it remained firmly in the grasp of the Benchers, who emphasized practical over theoretical aspects of the law in a fixed apprenticeship system. Initiatives for reform were usually mounted by younger members of the Bar or by the students themselves. Perhaps the most radical call for change came from Archer Martin, who, in the openi[illegible] article of the first issue of the Western Law Times in 1890, proposed the establishment of university training in law in Manitoba, pointing to the success of Harvard Law School. However, he did not repeat his call for a 'School of Jurisprudence' to replace the apprenticeship model, probably realizing that there was no local support for the idea.

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[88] Western Law Times 1 (1890):35-36; Manitoba Free Press, 6 February, 28 March and 5 April 1893.

[89] Ibid., 6 (1895):48.

[90] Manitoba Free Press, 23 December 1895.

[91] Ibid., 25 November 1895.

New rules brought into effect by the Society in May 1890, designed to tighten up and clarify the expectations placed on students-at-law and articled clerks,[92] were followed shortly afterward by a report of complaints by students that the questions set by the examiner were "preposterous in the extreme."[93] As a first step in improving the quality of their legal education, Winnipeg law students set up The Law Students Society, placing at the top of their agenda the objective of securing a course of lectures to supplement articling experience and self-study.[94] Next they successfully petitioned the Benchers of the Law Society to establish a series of evening lectures.[95] The inaugural address was delivered in January 1891 by Chief Justice Taylor to an audience at the Court House consisting of Winnipeg's leading citizens, giving added credence to the profession's claims to elevated status. For his part, Archer Martin was pleased. "We are glad to see that this old practice of the judges lecturing to the law students, which was so successfully and advantageously instituted by the late Chief Justice Wood, is now revived after years of desuetude."[96] Despite the high quality of the lectures delivered Tuesday and Friday evenings over the following months, poor attendance by students earned the wrath of Benchers, who also abruptly dismissed the students' excuse that the evening hour did not suit them.[97] The lectures

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[92] Western Law Times 1 (1890):70-71 provides a copy of the rules; 3 (1892):95 contains the warning that "the conduct of a branch office by a student is opposed to one of the most stringent rules of the Law Society."

[93] Ibid., 1 (1890):105.

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[94] Ibid., p. 170.

[95] A.W.C.L.H., A2793, Law Society Minutes. 25 November, 5, 12 and 19 December 1890.

[96] Western Law Times 1 (1890):210; Manitoba Free Press, 10 January 1891.

[97] The lecturers and their topics were as follows:

A. E. McPhillips	commercial law practice
Mr. Darby	commercial law
Mr. Ewart, Q.C.	pleading and practice
Hon. Mr. Justice Killam	equity jurisprudence
Mr. Hagel, Q.C.	criminal law
Mr. Cassidy	practice in criminal cases
Mr. Aikins, Q.C.	real property
Mr. Coultlee	real property
Mr. Macara	real property
Mr. Perdue	contracts
Mr. Phippen	bills of exchange and promissory notes

were discontinued in March and subsequent efforts sponsored by student organizations were intermittent[98] and usually short-lived. As unsatisfactory as these lectures were as an educational device, the autonomy of the profession in matters relating to educating its members or influencing their behavior generally remained undiminished.

The autonomy of the profession did not go completely unchallenged though. Responding to allegations by farmer organizations that the Law Society was deliberately forcing up legal costs, the Legislative Assembly struck a committee entitled a "Special Committee to enquire into the question of legal costs in civil proceedings in this Province, and the operation and effect of the incorporation of the Law Society of Manitoba upon such costs."[99] The real problem arose, claimed Archer Martin, when "the amateur granger legislator" classed conveyancers and others outside the profession with honorable men so that "the commercial lawyer is blamed, who perhaps has had nothing to do with the cases where the abuse has taken place."[100] The Committee's report was both a vindication and an assertion of the Society's right to control its own affairs. Concluding that the

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Manitoba Free Press, 6 January 1891.

[98] Western Law Times 6 (1895):1-2; Manitoba Free Press, 28 March 1898.

[99] The complete report is in Manitoba Legislative Assembly Journals, Vol 26. Second Session, 57 Victoria (1894):112-14.

[100] Western Law Times 5 (1894):26.

Society did not "in any way control the question of legal costs," they recommended against any interference "with its present corporate powers." Overall the report affirmed that the autonomous position that the profession enjoyed by the mid-1890"s was well-deserved:

> From the evidence adduced it appears that the Law Society of Manitoba has power to govern itself, and to regulate the qualifications and examinations of candidates for admission to the society as barristers or attorneys, to fix the fees payable by its members, and to legal men from other portions outside Manitoba, and to take proceedings to strike off the roll for cause, members found deserving of the same. It also appears that the society derives no revenue except from its own members, and out of those funds provides an excellent library for the use of the Judges and the profession, and by keeping up the standard of examinations, and striking off the rolls unworthy members, has done much to insure qualified men belonging to their profession.[101]

Intimately related to the more formal attributes of professional autonomy and the independence it entailed, were the informal means employed by the leading members of the profession to instruct younger members of the bar by example. Maintaining a competent and honorable image of itself in the mind of the community through the informal invoking of group standards had always been a part of the experience of lawyers,[102] but growing numbers and the pressures of serving commercial interests increasingly drew lawyers apart. In these circumstances the responsibility for passing along the essentials of a desirable professional lifestyle fell to those individuals who best embodied what I have termed the conservative style.[103] This concept denotes a professional orthodoxy developed by prominent lawyers in their responses to late nineteenth century Manitoba, rationalizing behavior tending to preserve the professional and social order that accorded them wealth and status. The conservative style was revealed by the lifestyle patterns of those legal men who either won or were awarded prominence in the legal fraternity or in the wider community. Delineated in a blend of social origins, schooling, career patterns, and community and fraternal associations, the conservative style was a standard of rational behavior to which aspiring lawyers sought to conform. Through the operation of the conservative style, the leading members of the bar could draw attention to and emphasize the importance of a positive public image.

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[101] Assembly Journals, p. 114. Committee members included several prominent lawyers: H. M. Howell, Q.C., W. E. Perdue, Isaac Campbell, Attorney General, and Hon. J. D. Campbell.

[102] See William Johnson's discussion of the "persistence of personalism" in Schooled Lawyer: A Study in the Clash of Professional Cultures (New York, 1978), pp. 38-41.

While lawyers met frequently in professional and social contexts, social gatherings which brought practitioners together in a mood of celebration, mutual admiration and perhaps envy, such as bar dinners, were especially useful in invoking appropriate group standards and recognizing the style which spelled success. Harking back to the ancient tradition of dining at the Inns of Court, the idea of holding an annual Bar dinner found enthusiastic support among Winnipeg lawyers when they were canvassed in 1891.[104] In the unavoidable absence of Attorney-General Joseph Martin, J. S. Ewart, Q.C., as chair, guided the legal gentlemen gathered at the Clarendon Hotel through an astoundingly lavish menu, numerous toasts and convivial singing entertainment in a "party" which reportedly "broke up in the early morning."[105] The first annual dinner was followed by a second annual dinner equally extravagant. A head table guest, Archer Martin was glowing in his praise of the event and its other organizers:

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[103] Canadian historians have expended a great deal of energy searching for the true origins and most representative expressions of a national conservative trait, allegedly permeating the Canadian psyche. Terry Cook, "The Canadian Conservative Tradition: An Historical Perspective," Journal of Canadian Studies 8 (Winter 1973):31-39. While many lawyers may have displayed features of a "tory mindset," swaying toward deference when it came to questions of authority, a conservative style as it is used here is not strictly ideological.

> The tables were most tastefully garnished with choice exotics, arranged in graceful design, and the whole appointments, from the boutonniére handed to each gentleman as he entered, down to the menu, were most complete and everything that could be desired. The menu was quite original in design, and each of the many tempting dishes was accompanied by a quaint and appropriate quotation. . . . The orchestra rendered an excellent selection of operatic airs which added not a little to the enjoyment of the dinner . . . ."[106]

In responding to toasts at the first dinner to the federal and provincial governments, respectively, A. W. Ross, M.P.

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[104] Western Law Times 1 (1890):230.

[105] Ibid., 2 (1891):12.

[106] Ibid., 3 (1892):10. A copy of the elaborate four page menu is located in P.A.M., MG14B21, Colin Campbell Papers, Box #2, 1892 folder.

nostalgically noted the great many changes that had taken place in the profession, while Mr. Cameron, MPP was more to the point, claimed Martin, taking the occasion "to refer to the necessity of obtaining legislation to arm the Law Society with power to purify the profession and keep up its high standard."[107] Justice Bain hoped that this annual event would continue because of the part it played in "fostering and promotion of a proper esprit de corps."[108]

Despite the generally recognized importance of these occasions, they unexplainably lapsed. If imitation is a form of flattery, then the students of The Law Students Society, who organized their own first annual dinner in 1891, were quick to appreciate the benefits of4 such events. With nearly all of their members attending and joined by a few representatives of the bar and bench, the format of the Student's evening was almost identical to that of the Bar.[109] At an annual banquet held several years later, as was common on such occasions, J. A. M. Aikins, Q.C. stressed the essential ingredients for financial success and Isaac Campbell, Q.C.[110] stressed the importance of moral rectitude in the profession. The students would have been hard-pressed to have found other prominent lawyers with better qualifications for speaking on these subjects.

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[107] Western Law Times 2 (1891):12.

[108] Ibid.

[109] Manitoba Free Press, 6 February 1891.

[110] J. H. O'Donnell, Manitoba As I Saw It (Toronto, 1909), p. 129.

Cooperation between the bench and the bar was essential for promoting the honorable image members of the profession desired. Since, from the perspective of the public, the courts could be subject to delay and uncertainty in finding remedies, and any failings in the smooth administration of justice or unnecessary strains in the relationship between judges and lawyers was capable of damaging reputations, maintaining a healthy working relationship was, therefore, desirable for both parties.[111] Reluctant to commit any impropriety which might undermine the essential dignity of the court, Archer Martin, while he felt compelled to criticize an injustice, was quick to point out that Manitoba judges were normally neither lazy nor prone to delay in rendering decisions. Claiming that the particular decision it was finding fault with in this instance was one that "many gentlemen also practicing at the Bar of the Court" had urged them to comment on, Martin was able to rationalize what he was doing as being in the best interests of all concerned. Apparently counsel for an appellant was prevented from presenting his case because of a minor technicality "that the copies before the Judges" in full court "were not sworn copies."[112] When the appeal in question was dismissed with costs, Martin was outraged.

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[111] Audra L. Prewitt, "Bar vs. Bench: New Factors in an Old Relationship." Essays on the Gilded Age, The Walter Prescott Memorial Lectures, ed. Margaret Francine Morris (Arlington, Texas, 1973), pp. 70-86.

[112] Western Law Times 1 (1890):102.

> We are of the opinion that the correct course to pursue is not to require sworn copies but simply 'copies,' as are called for by the rules, and if it should appear at the hearing that the attorney has not furnished 'copies' then let him bear the consequences of his mistake. It is preposterous, not to say insulting, to presume that any solicitor, an officer of the Court, would attempt to deceive the Court.[113]

When a motion to reinstate the case was denied, Martin's outrage turned to grave concern because the case, he explained, was an exceptional one, "bearing on the rights of mortgagees throughout this Province."[114] Clearly cognizant that the public took a dim view of such proceedings and that those who were most interested in speedy justice were unconvinced by the minor point seized upon by judges to display their authority, Martin concluded rhetorically "What shall we then say of the Court itself seeking to shut its doors in the face of the litigant taxed to support and maintain it as the fountain of justice?"

That the superior courts in the province ran smoothly most of the time was occasion for comment as well. Comparing Manitoba's courts favorably to the mother of common law courts in England where the "prestige of centuries" should have given them the advantage, Martin found the "degree of decorum and proper sense of dignity on the part of the bench and bar most creditable to a new country."[115] In addition to questions of decorum, Manitobans took noticeable pride in the fact that the demeanor of their courtroom was a reflection of the attitude of a law-abiding society. Chief Justice Taylor, in making opening remarks to a grand jury in 1891 repeated the commonly held belief that the Canadian record in this respect was far superior to that of the United States. Alarmed, however, by the increasing numbers of criminal cases for jury trials on the docket that could not be easily explained away as the product of procedural reforms, Taylor underscored the gravity of the situation and warned by implication that the legal system might face graver challenges in the future. Careful not to contradict what the Chief Justice had said, Martin explained that the reason why there were so few civil jury trials compared to criminal jury trials was that juries in civil cases had largely fallen into disfavour with the profession where "solicitors do not now bring their cases before a jury, and the profession leans more towards the trial before the impartial and learned judge."[116] Whether the change spoken of was initiated by lawyers themselves or by dissatisfied litigants remains a moot point. What is important is that the profession was adapting to changes in the courts in such a way that their client's interests were protected, but the abstruseness surrounding the courts and the accompanying mystique of men able to function there effectively remained intact.

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[113] Ibid.

[114] Ibid., p. 103.

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[115] Ibid., 2 (1891):115.

[116] Ibid., p. 159.

Criticisms of judges, if made at all, were to be governed by circumspection. Such was not the case in the Spring of 1894 when a "leader of the Bar" made derogatory remarks with respect to the fairness of the Justice hearing his case. Allowing charitably that the judge in question, who was not named, "may err in law, but he is considered a remarkable judge of facts,"[117] Martin used the pages of the Times to scold the miscreant member of the Bar for his inappropriate remarks. Because the action damaged the image of the entire Bar, the editor expressed, he believed, the expectation of the entire Bar, that the offender not go unpunished. Martin, however, would have exempted fair and honest criticism of the kind he was known to proffer.[118]

There were limits as well upon judicial comment that might reflect badly upon a member of the profession. Later the same year, an instructive incident occurred. Martin stood in defence of an attorney who had been censured by a trial judge for not being able to expound at length on a point of law that had not occurred to the lawyer while preparing his brief. Recognizing that judges ought to criticize when necessary, Martin cited the opinion of the leaders of the Bar that the censure was "in bad taste and uncalled for,"[119] especially since it would appear "for all time to come in the law reports and since there was no hearing allowed for by his professional peers." In reference to another matter the following year, Martin summarized the difficulty as he perceived it.

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[117] Ibid., 5 (1894):34.

[118] Ibid., 1 (1890):39-40.

> Judges, like newspaper writers, from their position, have artificial importance attached to their words. It is possible for counsel to err, and it is unjust for a fault that a judicial censure should be on record against him lifelong.[120]

In a similar spirit of mutual support, leading lawyers understood that the esteem connected with the judicial office could not be sustained if judges were either overworked or underpaid or both. Of course, backed up court dockets benefited no one and the prospect of low remuneration made the possibility of elevation to the bench a financial sacrifice more than an honor. In the former case, changes to the courts which benefited the whole profession were readily supported. Thus it was a collective sigh of relief which greeted news that Winnipeg's unpopular County Court Judge Ardagh (Eastern Judicial District) had died in April 1893.[121] Replacing him was D. M. Walker, who had served ably in the County Courts of the Western Judicial District.[122] Walker restored dignity to the proceedings by encouraging barristers to wear gowns in court, in "contrast to the degrading scramble that ran riot under the regime of the late Judge Ardagh," claimed Martin.[123] A procedural change in 1894 which raised the monetary limit on cases to be heard in County Courts increased the workload of all county court judges. D. M. Walker suffered most but he did not suffer quietly. Walker let the government know he was not happy with his lot. He refused to hold "chamber sittings" until a room in the court house was made available and no provision was made for regular sittings of the court during vacation. While he may have sympathized with Walker, Martin did not support his tactics. "Quarrels between the Government and the Judge must not interfere with the administration of justice."[124] Whether by design or coincidence is not clear, but in any case, the matter was resolved and Walker's workload reduced when an additional county court judge, Corbet Locke,[125] was named and stationed at Morden.

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[119] Ibid., 5 (1894):146.

[120] Ibid.

[121] Ibid., 4 (1893):55 and 57.

[122] A popular Winnipeg barrister, T. D. Cumberland, took over in the Western Judicial District, Manitoba Free Press, 6 June 1893.

The profession exercised considerable vigilance over the question of judicial salaries as well. For example, the editors of The Canada Law Journal, in comparing judicial salaries in Canada in 1890, particularly those in Ontario, with those paid in other parts of the British Empire, both self-governing and colonial possessions, found that Canada's judges were the lowest paid at all levels. Expressing shame at such a finding, they next turned to the real problem. "Where the salaries are insufficient to draw into the judiciary the most talented and the most accomplished and best read legal talent in the profession then third-rate and down to fifth-rate men will fill them."[126] The community would undoubtedly suffer, not to mention the status of the profession, because such men could not measure up to the high standard demanded of the judiciary.

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[123] Western Law Times 4 (1893):110.

[124] Ibid., 5 (1894):93.

[125] His appointment was mildly criticized by the editor of the Western Law Times who thought that a person should not be appointed to the same district they had practiced in. Ibid.

> Upon their wisdom and learning and trained abilities depend the true interpretation of the laws; upon their integrity and firmness rest the impartiality and certainty of justice; and upon their professional industry and business habits is mainly based the rapid and economical administration of the judicial powers of the Courts.[127]

Emphasizing that correctness and efficiency depended upon the expertise of the men most fit for the bench, and that delayed justice simply undermined the public's estimation of the legal system, the writers made their point powerfully, that attracting the country's top solicitors would not be easily accomplished, with salaries one half those of corporation solicitors.

Debates the following year in the Dominion Parliament, remarked upon by Archer Martin, returned to the theme of the shame of Canada in not upholding with a decent judicial salary the "dignity becoming their high office."[128] Hearing that legal representatives from Ontario were approaching the federal minister of justice with the goal of raising salaries for Ontario judges, the Free Press protested that the Manitoba situation was even more deserving of attention because "A salary of five thousand dollars goes much farther in Toronto or Montreal than it does in Winnipeg." The dangers cited in not raising the salary base were the same for Manitoba. "Elevation to the bench" was "the one great prize of the profession . . . . But often the successful practitioner . . . cannot afford to accept this honor."[129] Some modest gains were made during the decade,[130] but in 1898 complaints were still heard that Manitoba was being treated in a discriminatory fashion.

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[126] The Canada Law Journal 26 (1890):164.

[127] Ibid., p. 165.

> So far as the superior courts of Ontario, Quebec and the Maritime provinces are concerned the salaries seem to be pretty fair, but it is strange that in Manitoba the salaries should be no higher than in Nova Scotia, where the cost of living is fully twenty-five per cent less than in Manitoba. In 1897 Parliament passed an act increasing the number of county court judges in Manitoba from five to six, and at the same time increased the salary, to which a county court judge in Manitoba is entitled after three years' service, from $2,400 to $2,500. This reckless addition of a hundred dollars a year to the salaries of the judges in a province where the winter is long and fuel is dear, seems to have been a clerical error which was rectified in 1898 by restoring the old salary of $2,400. For the first three years a county court judge in Manitoba is only entitled

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[128] Western Law Times 2 (1891):160.

[129] 29 February 1892.

[130] For example, in 1895 it was reported that the salaries paid County Court judges in Manitoba had been raised while no increases were given to Ontario judges. Ibid., 1 June 1895.

> to $2,000 per annum. In such cases Lord Aberdeen's advice to increase the salaries might well be taken, but we are afraid Lord Aberdeen had in his mind the judges of Ontario and Quebec who are receiving $6,000 and $7,000 . . . .[131]

Growing more confident of itself, the Manitoba legal profession became impatient with suggestions or actions which implied an inferior status within Confederation. In response to a vacancy on the Supreme Court in 1893 created by the death of Mr. Justice Patterson, Manitoba's leading lawyers met to discuss and unanimously adopt a resolution calling for a selection from the Western provinces.[132] Martin urged the name of Mr. Justice A. C. Killam of Manitoba as a suitable appointment, but was soon embroiled in debate with The Canada Law Journal which had spoken out against sectional appointments. Angered by the false arguments presented and that Manitoban appointments were always "regarded in Ontario as its Western Reserve," Martin lashed out at the duplicitous approach of Ontario. "An appointment of a Manitoban to the Supreme Bench must not be hinted at. Ontario alone has a mortgage on it. New Brunswick, no doubt, has some right to one, but Manitoba and British Columbia, never. They belong to the Western Reserve."[133] The editors of the Free Press joined the fray, taking offence at the objections raised in Ontario which they believed were simply a screen for the prejudiced opinion that only the "two great legal centres," Toronto and Montreal, were capable of supplying worthy men. To seal their point, they cited the case of the late and much admired Sir John Thompson, who was a puisné judge in Nova Scotia before becoming Minister of Justice, warning that "There may be other Sir John Thompson's far out of reach of Toronto."[134] Perhaps in Manitoba.

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[131] Ibid., 8 November 1898.

[132] Ibid., 5 August 1893; Western Law Times 4 (1893):122.

[133] Ibid., 6 (1895):82.

When the selection of Chief Justice of Manitoba became necessary in 1899 with the resignation and retirement of Chief Justice Taylor, Prime Minister Wilfrid Laurier turned to a member of the profession from Manitoba. His first choice was Isaac Campbell, Q.C., a prominent Liberal who had served as president of the Law Society of Manitoba and the Winnipeg Bar Association and who was a man of expansive intellectual interests[135] and gifted erudition and oratory. He would have been a popular choice had he not declined.[136] As soon as it was learned that Campbell declined the offer, speculation began that Mr. Justice Killam would be approached next.[137] Apparently, Clifford Sifton, federal Minister of the Interior, had suggested Killam, and Laurier supported the suggestion. The name of Joseph Dubuc had come forward from other sources but both Sifton and Laurier had serious reservations, including his connection with the Roman Catholic Church. "I know enough about Dubuc to know that whilst he is a good man in many ways, he is but an inferior lawyer. I surmise that he is a violent partisan."[138] Killam was the government's choice, but he did not remain in Manitoba long. In 1903 the legal profession of Manitoba was granted its long awaited wish when Killam was elevated to the Supreme Court of Canada.[139] Joseph Dubuc took over as Chief Justice of Manitoba.

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[134] 4 November 1895. For evidence of the high regard accorded Thompson, see Richard Armstrong, "The Right Hon. Sir John S. D. Thompson, K.C.M.G., P.C., Q.C., As a Lawyer," The Barrister 1, no.2 (January 1895):61-66.

[135] One of those interests included an extensive collection of Abraham Lincoln literature and memorabilia. See P.A.M., MG14 B9, Isaac Campbell Papers, Isaac Campbell to Peter Campbell, 16 October 1895.

[136] Ibid., Wilfrid Laurier to Campbell, 28 February 1899. Laurier persisted in his attempts to lure Campbell into his choice of positions. "Since you will not be senator, I want you to be a member of the House of Commons & to run for Winnipeg. . . . If you find all this very peremptory, I do not apologise, it is your own fault" (Ibid., Wilfred Laurier to Campbell, 31 March 1899).

In the same way that their legal work supported the status quo and the preservation of community standards in that the omnipresent doctrine of stare decisis had to always be at the center of legal decision-making, lawyers were constantly surrounded by symbolic reminders of the traditional legal forms and practice observed in one common law world. Keeping some traditions alive, even if they did not serve any real practical purpose, served to sustain an established classical image with which both the membership of the legal profession and the wider community might identify. Unfortunately, one aspect of that tradition had become besmirched. Receiving his legal training in England where those designated "Queen's Counsel" were usually limited in number to people of unusual ability and where fairly strict customary and ethical expectations of the recipient pertained, Archer Martin was appalled at the situation in Canada. With strong language, he condemned the practice of governments granting Q.C.'s[140] to political supporters as an extension of their other patronage appointments. Martin thought that this "shameful exhibition of the prostitution of a once honorable and coveted distinction to the basest and most shameful ends of party favoritism" should fill the profession with moral indignation. J. S. Ewart had earlier used the pages of the Manitoba Law Journal to protest the awarding of Q.C.'s indiscriminately, but it would seem that the profession as a whole did not share Martin's views. Martin held out little hope of reforming the debased custom, so he recommended outright abolition.[141] Concerned over the unfairness of granting "indifferent lawyers precedence over those having real and undoubted merit, for it still carries a certain weight with an undiscriminating public," he again called for ending the nuisance in a brief editorial dripping with sarcasm.

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[137] Manitoba Free Press, 7 March 1899.

[138] P.A.C., MG26 G1, Vol. 791E, Laurier to Sifton, p. 225,220-1, 7 March 1899.

[139] See James G. Snell and Frederick Vaughan, The Supreme Court of Canada (Toronto, 1985), pp. 86-88.

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[140] After Confederation the right to appoint Q.C.'s was claimed by both the federal and provincial governments. In Ontario both were granted, but in Manitoba, federally appointed Q.C.'s were the rule.

[141] But Ewart himself took silk, thus destroying his credibility.

> Let an Act be passed providing that any barrister, immediately on his call to the Bar, could procure from the stamp vendor at the court house, for the sum of ten cents, a patent as Queen's Counsel. . . . The Law Society could help on the good cause by having on hand a job lot of silk gowns and red bags, which could be retailed to the members at the actual cost price, thus placing them within easy reach of all foolish enough to desire them under such circumstances.[142]

Martin's sarcastic barbs continued, especially when a dispute arose in 1892 over which Manitoba Q.C.'s should enjoy the right of precedence in court.[143] In addition to perhaps attracting more clients because the public thought the Q.C. indicated greater knowledge and skill, and the formal right to wear a silk gown, the formal privilege causing the most difficulty was one allowing Q.C.'s "the right of pre-audience" or to present their motions first in court. The lawyers involved in the dispute were J. A. M. Aikins and H. M. Howell. Both men received their patent to practice in Manitoba the same day and Howell objected to the fact that Aikins was allowed to present his motions first, claiming that he had been called to the Bar in Ontario before Aikins. When handed down, the judicial decision favored Aikins since, it was argued, he had been called to the Bar of Manitoba first.[144] Two years later, news that ten lawyers in the province had been appointed Q.C. produced a similar reminder of Martin's position. "The whole business is a silly farce and we no longer get angry but smile an appreciative and understanding smile for we all know exactly why each one of the above was appointed and each one knows that we know the reason."[145] Martin's views drew neither a groundswell of support nor overt rejection, because although many no doubt found merit in his claim that to grant so many Q.C.'s in Canada compared to the United Kingdom reduced their meaningfulness, few who were offered one were prepared to sacrifice their opportunity to be recognized as part of a noble historical tradition by saying no to the distinction or the business it might generate.[146]

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[142] Western Law Times 1 (1890):11.

[143] Ibid., 3 (1892):13.

[144] Ibid., p. 116; Manitoba Free Press, 3 May 1892.

In upholding other symbolic and honorable aspects of professional life, Martin's views were closer to those of his fellow legal leaders in the province. For example, he advocated the commissioning and speedy completion of portraits of all the Chief Justices to form a gallery in the Court House.[147] He joined the Law Society in urging the government to spend sufficient money on the new court house addition to ensure it was both functional and attractive[148] and rejoiced with them when the work was complete.[149] When the honor of a knighthood was conferred upon Chief Justice Thomas Wardlaw Taylor during the diamond jubilee year of Queen Victoria, the wider membership of the legal profession was ecstatic at his receiving "an honor which will be shared by the court, the bar and the people of the province."[150] Making the most of the event, the opening of the Court of Queen's Bench provided a suitable occasion for all the most prominent members of the profession to assemble in public to salute one of their own. In addition to enhancing the status of all lawyers, the event seemed to signal that Manitoba had arrived, seeking the national recognition her population desired.

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[145] Western Law Times 4 (1893):2-3. The recipients were: Alexander Haggart, J. S. Hough, James Fisher, Colin H. Campbell, Horace E. Crawford, J. H. Munson, J. H. Gilmour, Corbet Locke, J. W. Cooper and George R. Coldwell. See copy of patent in P.A.M., MG14 B21, Colin Campbell Papers, Box #2, 1894 folder.

[146] Q.C. appointments continued to be controversial. See Roy St. George Stubbs, "On the Appointment of King's Counsel," Manitoba Bar News (February 1951):15-20; Idem., "A Second Helping," Manitoba Bar News (August 1951):61-66; Kathryn Fowler, "Quaint Custom," Canadian Lawyer (June 1978):30-33; Dale Gibson, "Time has Come to Stop Appointing Lawyers Q.C.'s," Winnipeg Free Press, 30 December 1983.

[147] Western Law Times 1 (1890):166 and 2 (1891):187-88.

One aspect of the professional image that practicing lawyers appear to have been largely agreed upon was that the professional world was a man's world. That women might wish to enter as well, was simply not entertained because no one raised the question, but by the nineties it was occasioning comment. Promoting reforms to enhance the image of the profession in other areas, Archer Martin was staunchly traditional in his views of women.

> We understand that an application has been made to the Benchers of the Law Society of Upper Canada, by a young

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[148] Manitoba Free Press, 3 August 1892.

[149] Ibid., 27 November 1894.

[150] Isaac Campbell, Q.C., quoted in Ibid, 29 June 1897.

> lady, Miss Clara Martin, B.A., of Trinity College, Toronto, for admission as a student at law. With no disrespect intended towards the fair sex, we hope the Benchers will refuse the application as we do not think, all things considered, that the legal profession will be benefited by the admission of ladies to its ranks.[151]

After learning that legislation passed in Ontario allowed women to become solicitors but not barristers, Martin pointed out the contradiction and reiterated his negative view, one likely shared by most of the legal fraternity of Manitoba.

> Now on what principle have women been refused the higher privilege of being called to the bar? If they have enough sense to act as solicitors and instruct counsel and client, they have enough to plead the causes themselves, and if they are fitted for the bar they are certainly fitted for the bench and legislature and also to serve on juries, though we shudder in contemplating these results. The truth is they are not fitted for any of these positions, ...[152]

By 1895 legislation in Ontario empowered the Benchers of the Law Society of Upper Canada to admit women to the Bar as well, but one of the greatest concerns of the Benchers there was that qualifying for the Bar meant that women would also be eligible for the bench.[153] In the minds of the leading members of the profession, such a prospect was something akin to suggesting that women be ordained as clergy. Miss Clara Martin, the first applicant, was turned down by the Benchers. The Canada Law Journal, in supporting their action, revealed much of the prevailing view in Canada at the time in its editorial comment in 1896.

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[151] Western Law Times 2 (1891):65.

[152] Ibid., 4 (1893):1.

[153] In May 1895 the editor of The Canada Law Journal wrote, "the only legitimate way of keeping women off the Bench is by excluding them from the Bar."

> There is some reason for the Admission of women to the medical profession, but we know of no public advantage to be gained by their being admitted to the Bar, ... As a matter of taste it is rather a surprise to most men to see a woman seeking a profession where she is bound to meet such that would offend the natural modesty of her sex.[154]

When she was successful in 1897 in her bid to join the "brethren" of the bar, the same periodical expressed the hope that Clara Martin would be "the one brilliant exception to the time-honored rule which . . . closed our ranks to those who were not of the male persuasion."[155] While Manitoba lawyers kept abreast of events unfolding in Ontario they need not have worried, though they too were skeptical. The first application for admission by a female student was not made in Manitoba until Miss Melrose Sissons did so in 1911.[156] She was joined in being called to the Bar by Winnifred M. Wilton in 1915.[157]

As with most aspects of social change, shifts in professional life which involve attitudes or responses to them are extremely difficult to measure. In the case of the general image the public held of lawyers' ethics by the late 1890's, there was little that would suggest that the generally negative impression had improved. In 1898 a Winnipeg editor wrote not without some apparent delight that lawyers "have always been more or less in evil repute with the masses."[158] Reporting that because the Methodist General Council decided against employing lawyers in the courts of the church because it was "likely to prevent the settlement of cases along the lines of Christian charity" and that labor unions had resolved lawyers were ineligible for membership, it appeared that their pursuits were becoming more restricted. But such was not the case, claimed the writer, "as long as the legal lights have a monopoly of most of the plums of politics, and never lack for fat clients."

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[154] 32 (June 1896):423.

[155] Ibid., 33 (February 1897):133.

[156] Canada Law Times 31 (July 1911):554. She was at first turned down by the Law Society on the grounds that the word "person" in the Law Society Act did not include women. A subsequent amendment of the Act removed the barrier.

[157] Winnipeg Telegram, 26 November 1915; a more extensive treatment of the subject is Cameron Harvey, "Women in Law in Canada," Manitoba Law Journal 4, no.1 (1970):9-38.

Indicating a growing sensitivity to this negative criticism, Archer Martin reminded his readers of steps which might prevent more serious damage. One of the 'plums' of politics enjoyed by lawyers was to be named to preside as revising barristers at the Courts of Revision of lists of electors at election time. Despite the "customary slating" received by opposing parties, Martin found no wrong-doing on their part, for as he explained, "no matter what his politics are, as soon as you appeal to a lawyer as a lawyer his legal instincts are so strong that he may be relied on to act in a legal manner."[159] As confident and pleased as he was with this fact, Martin understood that the public did not share his view and might need greater persuasion even if it was merely symbolic. He suggested having revising barristers wear gowns to cloak their actions in "a certain amount of ceremonial," which would "preserve a certain amount of dignity in the eyes of the people." Furthermore, to help dispel the notions of "scoffers and sceptics [_sic_]" that lawyers were wallowing at the public trough of patronage, he published in 1891 the remuneration paid to various legal gentlemen for services rendered to the government.[160]

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[158] Manitoba Free Press, 28 September 1898.

1891.

Attorney-General's department	$ 5,635.16
H. H. Coulter	10.00
Allen and Cameron	881.68
Fred. C. Wade	492.85
J. H. Haverson	5.00
Mulock and Robarts	40.00
Munro, West and Mathers	1,456.35
Archibald & Howell	875.40
A. M. Peterson	456.90
Burke Corbett--extradition	155.20
Smith Curtis	92.85
W. F. Ellis	10.00
Gormully and Sinclair	959.00
Henderson and Matheson	283.14
A. A. McClellan	15.00
D. A. McDonald	120.50
J. B. McLaren	312.08
Chris. Robinson, Q.C.	500.00
Perdue and Robinson	1,038.50
O. H. Clark	153.00
	$13,492.61

And over what appeared to him to be a breach of professional ethics in conducting business Martin was quick to condemn the unsavory practices, which had not altogether faded into the past.

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[159] Western Law Times 3 (1892):75.

[160] Ibid., (189):27.

> We regret to say that complaints have been made to us, from quarters that deserve every consideration, that certain members of the profession, who ought to, and do, know better, have been in the habit of dealing in half-breed titles in a manner which, while infringing in no rule of law, is yet highly unprofessional and dishonourable and merits condemnation from the Law Society and the Court.[161]

J. S. Ewart, another important opinion-shaper in the province, expressed concern over the activities of some members of the judiciary. Specifically, he objected to judges accepting extra-judicial work on commissions of inquiry, not because they were unsuited for the work, but because they were frequently earning remuneration above their salaries which could be "practically converted into a prostitution of the Bench" by unscrupulous politicians and colluding judges. From the public's view, he argued, "a judicious coat of whitewash applied by a judicial hand may be made to cover the most flagrant iniquities."[162].

While few leading lawyers were as able to give voice to their concerns about reliable guidelines and ethical practices as often as Martin and Ewart did, they were not blind to the unique relationship between their behavior and public perceptions or of the need to come to terms in a practical way with ethical concerns of the day.[163] They also well understood that even though they were scrupulously honest, the nature of their work encouraged suspicion and hostility, unlike that of the clergy and medical practitioners. Lawyers were forced to live with paradox, as an article in The Canadian Law Review in 1904 aptly pointed out.[164]

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[161] Ibid., 2 (1891):66. A description of the purchasing technique employed by lawyers is W. P. Fillmore, "Half-breed Scrip," Manitoba Bar News 39, no.2 (1973):124-30.

[162] The Canadian Law Review 2 (1903):682. Also see his article "Jobs for Judges," Canada Law Times 23 (1903):363-68.

> How different is the lawyer's lot! His chief occupation assails man's most tender spot--his pocket. His noblest victory is another man's sore defeat. His greatest triumph means, perhaps, financial ruin to his foe. Temptation lies in wait for him on every side. Base, sordid and designing men continually seek to use his skill and talent to secure a successful result of their vilest machinations. His sternest duty compels associations with the most depraved, while human blots do strive to stain his record for the sake of future gain. Envy, greed and malice join hands to block his path. The higher his advancement the more numerous obstacles confront him. The more unsullied his reputation, the more determined becomes malice to tarnish it. His foibles are harshly criticised, his frailties are exaggerated, and his faults magnified. Whatever of merit is conceded him is grudgingly granted with a "but." Whatever error he commits, Dame Rumor sends her fleetest messenger to spread abroad. Defeat brings to him no sypathizing [sic] friend, but often moves his client to turn and denounce him. This being true, is it strange that the lawyer should be misjudged by the ignorant, the stupid and the undiscerning? Or that the educated, intelligent and refined should often be unjust to the profession?

In the face of such a challenge it is not surprising that a conservative impulse took hold of leading lawyers who sought to protect professional prerogatives by strengthening autonomy and improving the image of lawyers by securing it against any major threats to status. Events had moved rapidly in Manitoba and one reaction to the changes that had shaped legal life in the province was to work diligently to collectively consolidate the gains that had been made. Another reality, however, compelled lawyers to loosen their grip on the values of a society that was mainly agrarian and rural in orientation and which relied largely on individual initiative and found parameters for action in moral standards that were intuitive.[165] Under the mounting pressures imposed by industrial expansion, commercial growth and technological improvements, a response to the modern realities of doing business was demanded of lawyers.

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[163] "Practical Ethics of the Lawyer," Canada Law Times 29, no.18 (1909):253-270, a paper read by M. H. Ludwig, before the Ontario Bar Association, 18 December 1908.

[164] "Can Lawyers be Honest?," The Canadian Law Review 3 (March 1904):181-82.

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[165] Alan Smith argues that self reliance was at the core of national experience in "The Myth of the Self-Made Man in English Canada, 1850-1914," Canadian Historical Review 70, no.2 (June 1978):189-219.

CHAPTER X

"NO LONGER THE LEGAL PROFESSION; IT IS THE LAW BUSINESS," MODERNIZERS: PROMINENT LAWYERS RESPOND TO CHANGE, 1888-1900

When Thomas Greenway led the Liberals to power in Manitoba in 1888, united loosely around their opposition to federal disallowance and inspired by the urgency of presenting the CPR with competitive railway lines, there were two lawyers in his caucus who would raise the profile of the office of Attorney-General. While Greenway, at age 50 and with a style that appealed to the rural majority, was a skilled politician in his own right,[1] he was not vigorously decisive nor forceful enough to dominate Joseph Martin, who at age thirty-six was appointed Attorney General and Railroad Commissioner. In some respects the same thing was true when Clifford Sifton became Attorney General in 1891 at age thirty, but Sifton's relationship with the premier and his style of leadership was in striking contrast to that of Joe Martin. Under Sifton's influence, the Attorney General's office enjoyed greater status than before, reflecting Sifton's own acuity and the maturity of legal life in the province.[2] In fact, the apparent discontinuity in the leadership and operation of the ministry symbolized the fundamental tensions which existed in the profession as lawyers responded to the challenges of modernity.

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[1] His political career receives extensive treatment in Joseph A. Hilts, "The Political Career of Thomas Greenway" (Ph.D. dissertation, University of Manitoba, 1974).

Elected an MPP shortly after his arrival in Portage la Prairie in 1882, Joseph Martin, a Liberal, introduced a fiercely partisan spirit into the legislature. Attracted by the populist causes of provincial rights and opposition to the CPR monopoly, he was noted for his unsavory and sometimes violent electioneering tactics and constant attacks upon the government while in opposition. In one typical instance, he charged the premier, John Norquay, with the theft of public funds in a fraudulent coal deal and alleged a subsequent cover-up of the swindle. While the premier's actions were not completely without taint, the Royal Commission investigating the matter exonerated Norquay.[3] While in opposition, the sometimes erratic Martin even advocated illegal actions and the use of force to secure Manitoba's right to charter railways and to pursue provincial railway construction. Once in power, his personal energy and unconcealed ambition to be premier himself[4] was soon apparent, as he ignored Thomas Greenway whom he held in contempt, consulting with him as it suited his own purposes.

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[2] The evolution of the office of Attorney General in Canada is the subject of Paul Romney, Mr. Attorney: The Attorney General for Ontario in Court, Cabinet and Legislature, 1791-1899 (Toronto, 1986).

[3] Apparently Norquay owed the government a $1,500 personal debt on a bad investment made in the Saskatchewan Coal Mining and Transportation Company. He was also accused of wrongdoing in connection with the sale of a plot of land used for building the provincial asylum. The 1886 Royal Commission was headed up by Chief Justice Wallbridge.

Basking in the afterglow of an election victory and the popularity of being able to claim credit for the cancellation of the CPR monopoly clause in 1888,[5] Greenway and his railroad commissioner, Martin, were soon engaged in the enormous task of satisfying the conflicting interests backing various railway schemes. Promises were made to promoters backing the Manitoba Central Railway (MCR) to restore their previously disallowed charter and to both the MCR and those backing the Hudson Bay Railway (HBR) that they would enjoy access to the United States border over the uncompleted Red River Valley Railway (RRVR). The dream of providing Manitoba shippers with a competitive alternative to the CPR, however, hinged upon securing a viable connection with an existing American road. When negotiations began in earnest, the best that could be worked out was an agreement with the Northern Pacific. The terms of the contract granted a charter to a subsidiary, the Northern Pacific and Manitoba, to finish construction of the RRVR and run branch lines to Portage la Prairie and Brandon, but stipulated that the freight rate charges must obtain cabinet approval before going into effect. A prominent Liberal lawyer, James Fisher, opposed the deal along with other interests backing the less favored HBR which, unlike the MCR, had no working arrangements with the Northern Pacific. A revolt against the premier, which Clifford Sifton refused to join, was briefly considered by influential Liberals, but the measure passed when the caucus recognized the political benefits of achieving an alternate route that would actually offer lower freight rates to their constituents.[6]

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[4] D. J. Hall, *Clifford Sifton*, vol. 1: *The Young Napoleon 1861-1900*; vol. 2: *The Lonely Eminence 1901-1929*; 2 vols. (Vancouver, 1981-85), 1:35; Peter Brock, *Fighting Joe Martin: Founder of the Liberal Party in the West* (Vancouver, 1981), p. 117.

[5] See J. A. Jackson, "The Background of the Battle of Fort Whyte," H.S.S.M. *Transactions*, ser. 3, no. 2 (1945-46):43-55.

That Joseph Martin was to be Vice-President and director of the Northern Pacific venture raised suspicions that his position as a member of the government was untenable. The editor of the Free Press, W. F. Luxton, charged that Martin was in a conflict of interest situation and was to gain personally by the arrangement while also suggesting that the province, by satisfying the contract, had simply exchanged one monopoly for two.[7] Savaged repeatedly in the press, Martin and Greenway struck back in October 1888 with a well-publicized criminal-libel suit against the newspaper that was eventually dismissed by a grand jury. But that was not the end of conflicts with the press or confrontations involving Joe Martin as a principal.

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[6] T. D. Regehr, The Canadian Northern Railway (Toronto, 1976), pp. 7-17.

[7] The controversy can be followed in The Free Press beginning in the first week of August 1888.

Resumption of construction on the Red River Valley line by the Northern Pacific interests demanded that the railway cross the CPR lines at several points. Rather than seeking the necessary permission from the Railway Committee of the federal cabinet as was the normal procedure in such cases, Martin decided to use confrontation against the most unpopular CPR in order to score points with the public. Construction crews were instructed to complete the crossing under cover of night, which they did 24 October 1888. When the CPR superintendent, William Whyte, following orders from Vice-President William Van Horne to oppose the crossing, heard what had happened he immediately dispatched a train-load of men from the Winnipeg shops to the crossing that became known as "Fort Whyte." There they met a contingent of several hundred constables who Martin, as Attorney-General had hurriedly sworn in to defend the disputed territory, but they proved no match for the CPR crews who tore up the tracks and abandoned an engine in the path of the Northern Pacific and Manitoba line before triumphantly returning to Winnipeg brandishing the offending diamond. Various legal manouevres by Martin's people were matched by the CPR running a locomotive back and forth over a proposed point of crossing. The CPR then sought legal injunctions and Martin responded with threats to remove tax privileges and introduce punitive ones, if necessary. Faced with the recalcitrance of the CPR, Martin finally referred the matter to the railway committee of the federal cabinet who asked the Supreme Court for a ruling. Both the Northern Pacific & Manitoba and their crossing of a CPR right-of-way were deemed valid by the court in December 1888.[8]

Martin's flamboyant and combative style as Attorney General and his handling of this affair underlined his lack of appreciation of the peculiar nature of the office he held or the damage he might do to his government. In weighing his responsibility for enforcing the law against supporting his government's railway policy, Martin seemed willing to flirt with illegality to have his own way against the hated CPR. An independent-minded Clifford Sifton objected that this was no way for a modern and business-like government to inspire confidence or proceed.[9] In resolving difficulties, legal means and a willingness to compromise were preferred over discredited confrontation. Having apparently learned little from these first skirmishes, Martin was soon at the center of a crisis in government education policy which he was largely responsible for precipitating.

Joseph Martin was responsible for the legislation which created the Manitoba School Question, but as most authorities point out, he introduced it under receptive conditions.[10] At the province's inception, management of schools was placed in the hands of Catholic and Protestant denominational schools with government financial assistance being divided equally. The steadily declining demographic strength of the French and the Catholics in the wake of a large influx of Protestants from Ontario, led to dissatisfaction with the apportionment of school grants, which the Protestant population, especially of western Manitoba, complained openly about.[11] Anti-French and anti-Catholic prejudices also played a part in a growing agitation to replace Manitoba's dual system with a non-sectarian Ontario model.[12] By 1889 it was becoming clear that the Greenway government intended to carry out educational reforms which would create 'national schools,' a euphemism for a unitary system operated by the majoritarian group, roughly based upon the notion of separation of church and state. The form this would take, however, was not yet clear. Another factor in the equation was political need. The Liberal government of Thomas Greenway required an issue that would boost its popularity now that the question of disallowance had been removed. To meet that political requirement, it proved easy to make that issue the curtailing of Catholic schools, because of the emotional milieu then forming in the province.[13]

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[8] Regehr, The Canadian Northern Railway, pp. 18-20.

[9] P.A.M., MG13 E1, Greenway Papers, #1,192, Clifford Sifton to Greenway, 31 October 1888.

[10] Paul Crunican, Priests and Politicians: Manitoba Schools and the Election of 1896 (Toronto. 1974), p. 10.

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[11] Brandon Sun, 9 January 1884.

[12] Tom Mitchell, "In the Image of Ontario: Public Schools in Brandon, 1881-1890," Manitoba History 12 (Autumn 1986):25-34.

[13] J. L. Holmes, "Factors Affecting Politics in Manitoba: A Study of the Provincial Elections, 1870-99" (M.A. thesis, University of Mantioba, 1936), p. 89.

During the summer of 1889, lawyer-politician D'Alton McCarthy, who was a major force in Ontario politics and the federal parliament, journeyed to Western Canada to continue his opposition to the Jesuit Estates Act and to alert all Canadians to the imminent dangers of aggressive French-Canadian nationalism.[14] On 5 August 1889 he gave a speech in Portage la Prairie which stirred Joseph Martin, who was on the platform, into action. The impact of the moment was catalytic as Martin went beyond praising McCarthy to announce school reforms that were not yet government policy. His remarks left little doubt that the government intended to abolish both the official use of French and the dual school system. Anticipating the need to explain his actions, Martin took the defensive in correspondence with the Premier in the following days. He wrote,

> I am afraid after reading the paper this morning you will think I have been going it rather strong--I had no right I suppose to be so definite in the French language matter. Perhaps I went too far if so I am prepared to be censured but I feel sure that there is no use doing this thing by halves--Prendergast could not stay with us on the abolition of the Board of Education the only way to run the schools will be to make them all alike in the eyes of the law and have no religious instruction in any of them. I think up to that point we are agreed and what I said last night was the necessary outcome of the decision of caucus to abolish the Boards of Education. In doing this much we lose without doubt the support of the French if we ever had any effective support from them. Having lost support what possible object can we have in not meeting the strong demand for the abolition of the French language. The connection of the two seemed so clear last night that without realizing that I was going a little too far I spoke as if it were the

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[14] See J. R. Miller, "D'Alton McCarthy, Equal Rights and the Origins of the Manitoba School Question," Canadian Historical Review 54 (1973):369-92.

settled policy of the government to do both things.[15] Despite the resignation of J. E. P. Prendergast, the Provincial Secretary and a lawyer MPP representing a French constituency, and Greenway's initial annoyance with Martin, he soon committed the government to the course of action Martin had announced. According to W. L. Morton, who was very critical of Greenway, "the pressure of events and the fretful irascibility of Martin"[16] won the day. Martin pressed ahead with his 'radical course'[17] despite the tensions created in cabinet.

Legislation designed to end the official use of French passed quickly but the matter of school legislation was a far more serious matter. Joseph Martin introduced two measures on 12 February 1890 which would have had the effect of establishing a single school system and which would have effectively abolished the division of funds for Protestant and Catholic schools. During protracted debates, Prendergast and others opposing the legislation pointed to the legal and constitutional guarantees contained in the BNA Act, the Manitoba Act and the Education Act 1871, while lawyer Clifford Sifton, still cutting his teeth in the assembly, emerged as the most capable defender of the government's abolition position. Despite opposition to them both, the measures received royal assent by the end of March. The issue came to involve a great number of historical actors, including several prominent Manitoba lawyers, as it dominated provincial and federal politics for seven years, but Martin was chiefly responsible for its "genesis."[18]

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[15] Joseph Martin to Thomas Greenway, 6 August 1889, quoted in Brock, _Fighting Joe Martin_, pp. 134-35.

[16] _Manitoba: A History_, p. 246.

[17] Hall, _Clifford Sifton_, 1:45.

Martin's crisis management style was making him a political liability in the office of Attorney General and he resigned in 1890. The two most capable lawyers in the caucus for the post were Isaac Campbell and Clifford Sifton, but both declined when offered the ministry. Martin agreed to stay on as Attorney-General, but his defeat as a Liberal candidate in the 1891 federal election in the Selkirk riding by well-financed and organized lawyer, T. M. Daly, signalled a change.[19] He resigned as Attorney-General. Before accepting the position, Clifford Sifton extracted terms from Greenway. Sifton insisted that education matters be shifted from the Attorney-General to the Provincial Secretary and that J. D. Cameron, a Winnipeg lawyer, take over as Provincial Secretary.[20] As Sifton's biographer stresses, he was articulate and rational in his arguments, meticulously organized and well-prepared in his initiatives and inclined to use rules and procedures to his advantage rather than to flaunt his disregard of them, but above all, he was business-like in his approach. While Martin was "volcanic, dramatic and irascible," Sifton was "systematic, calm and calculating."[21] Responsibility for supervising the legal system of Manitoba had passed to a man whose style and approach represented the intrusion during the 1890's of a gradual modernizing of the way lawyers conducted themselves in public afairs and in the law business.[22] The transition was not an aberration in the experience of the Manitoba legal community nor was the example of Martin and Sifton confined only to lawyers as politicians; it was indicative of the challenge facing all lawyers, who on the eve of the twentieth century, stood on the threshold of a period of national transformation.[23] Urbanization, industrial growth, technological change, the growth of labor and the arrival of vigorous reform movements were beginning to render society more complex and the combination demanded that lawyers respond. Their world was changing quickly. Rising to prominence before 1900 under conditions one writer called

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[18] Crunican, Priests and Politicians, p. 11.

[19] See. J. R. Miller, "The 1891 Election in Western Canada," Prairie Forum 10, no.1 (Spring 1985):147-67.

[20] Hall, Clifford Sifton, pp. 50-51.

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[21] Ibid., p. 38.

[22] Sifton employed the same business-like style and organizational skills when he was Minister of the Interior under Laurier. D. J. Hall, "Clifford Sifton": Immigration and Settlement Policy, 1896-1905," The Settlement of the West, ed. Howard Palmer (Calgary, 1977), p. 61.

[23] Robert Craig Brown and Ramsay Cook, Canada 1896-1921: A Nation Transformed (Toronto, 1974), chap. 1; see also Robert H. Wiebe, The Search for Order, 1877-1920 (New York, 1967) for American parallels.

"the crucible of the Kingdom of Canada,"[24] Manitoba's leading lawyers were not unaware of the challenges facing them but they were only beginning to understand how best to adapt.

In a perceptive examination of reactions of the Ontario Bar to the demands that change made upon them between 1880 and 1920, James Forbes Newman saw lawyers looking backward to a simpler time, somewhat fearful of what lay ahead and at the same time looking forward confidently to a future laden with opportunities. Being forced to consider their future while remembering their past assisted in bringing into sharper focus the two contrasting approaches available to them. According to Newman, "One saw a need for the profession to adopt wholeheartedly the values and techniques of commerce in a technological society: the lawyer would thus become a businessman," while the other "sought to refurbish the older image of the lawyer, stressing the idea of the lawyer as gentleman and statesman in a moral society. This view saw him in the role of philosopher-king, a man of perception, the recognized leader of society."[25] While it was not disappearing overnight, the "older image" of the lawyer was coming under considerable pressure to conform to the fact that "the new leaders of the community and the nation were the men of commerce and industry." The more that lawyers became creatures and servants of commerce, the less time was spent in the "spotlight of the courtroom or assembly hall defending the rights of his client or expounding on public affairs." Where once visible advocacy had been the hallmark of success for prominent legal lights, the "counsellor" who advised businessmen in the privacy of boardrooms and who "shunned the public forums," was becoming more common.[26] Never entirely trusted by the public at large or by the men of commerce for whom they transacted business,[27] lawyers were understandably anxious over such changes.

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[24] Louis A. Knafla, "From Oral to Written Memory: The Common Law Tradition in Western Canada," Law and Justice in a New Land: Essays in Western Canadian Legal History (Toronto, 1986), p. 41.

[25] "Reaction and Change: A Study of the Ontario Bar 1880-1920," University of Toronto Faculty Law Review 32 (1974):55.

Similar changes in the role and image of the lawyer were occurring throughout North America, but at varying speeds and levels of impact,[28] eliciting responses on their part that were, not surprisingly, both conservative and resistant to change, and forward-looking and positive. In Manitoba as in Ontario, it is possible to discern that the attitudes expressed by lawyers concerning acceptance of specialization as part of a model of efficient organization, reexamination of the merits of public life, distrust of legislatures and legislators, and the impulse to certain legal reforms were all part of their responses to the modernizing trends of their time.

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[26] Ibid., p. 54.

[27] Michael Bliss, "'Dyspepsia of the Mind': The Canadian Businessman and His Enemies, 1880-1914," Readings in Canadian History Post-Confederation, 2nd. ed., ed. R. Douglas Francis and Donald Smith (Toronto, 1986), pp. 211-12. The Canadian Manufacturer is quoted in January 1894 as viewing the professional man as "a caterpillar on the leaf of commerce."

[28] Auerbach, Unequal Justice, chap. 1; Wayne K. Hobson, The American Legal Profession and the Organizational Society, 1890-1930 (New York, 1986), chaps. 1 and 2.

As the dominant model of organization for the law office, specialization required that lawyers make choices between the old and the new. Wayne K. Hobson's remarks, although based on the experiences of lawyers in the United States at this time, apply with equal force to lawyers in Western Canada, especially those located in larger urban centers.

> The corporation lawyer came to replace the advocate as the leader and symbol of the profession. In fact, by the late nineteenth century, a paradox in the lawyers role is apparent. At the same time that leading lawyers were extolling and protecting individualism . . . they were . . . helping to organize the major organizational innovation in American society, the large corporation.[29]

Not all of Manitoba's prominent lawyers would become 'corporation' lawyers, but lawyers such as J. A. M. Aikins, Colin H. Campbell and others moved quickly after their arrival to apply the advantages of specialization. Their imitators were numerous enough that by 1900 the corporate law firm was well-established as a model to emulate in Manitoba. In the largest urban centers, where prominent lawyers were concentrated, census figures reveal that a trend was underway in which the average size of firms and the total number of large firms was growing. In 1950 a "Survey of the Legal Profession in Canada," carried out jointly by the Canadian Bar Association and the Carnegie Foundation of New York released historical statistics revealing the distribution of lawyers in Manitoba according to the size of the municipality.[30] A significant percentage practiced in Winnipeg.

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[29] Wayne K. Hobson, "Symbol of the New Profession" Emergence of the Large Law Firm, 1870-1915," The New High Priests, p. 67.

TABLE 10.1

Distribution of Lawyers in Manitoba by Size of Municipality
1900 - 1910 (Percentage Figures)

Population Centre	1900	1910
100,000-300,000	--	67
25,000-100,000	50	--
5,000-25,000	9	9
2,500-5,000	4	2
under 2,500	38	23

TABLE 10.2

Distribution of Lawyers in Manitoba
1900 - 1910 (Actual Numbers)

Population Centre	1900	1910
Cities 100,000-300,000	---	202
Cities 25,000-100,000	74	---
Towns 5,000-25,000	13	26
Towns 2,500-5,000	6	6
Villages under 2,500	56	68
Total	149	302

More revealing were the findings indicating how lawyers were steadily combining into both large (four or more partners) and small (up to three partners) firms.

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[30] The following tables were modified from a report appearing in "Lawyers--Today and Fifty Years Ago," Manitoba Bar News 22 (August 1950):59-65.

TABLE 10.3

Distribution of Lawyers in Manitoba by Firm Size 1900 - 1910 (Actual Numbers)

Category	1900	1910
King's Counsel	17	24
Solo	73	101
Small Firms	27	55
Members in Small Firms	58	127
Large Firms	4	15
Members in Large Firms	18	74

It is likely that the most prominent lawyers in Manitoba would have agreed with a writer whose comments about New York law firms appeared in the Canada Law Times in 1901. He exclaimed, "It is no longer the legal profession; it is the law business."[31] When viewing the membership and organization of a law firm, it was therefore necessary to apply the lessons of business. With the diminishing value of fame in the courtroom and the art of oratory, the successful law firm was fashioned by combining specialized expertise and utilizing it to the greatest advantage of the client and the firm. Of course modernization is a relative concept and the concomitant models of specialization and efficiency when applied to law firms in Manitoba were subject to great variation, but it appears that the organization of the successful law firm, even if the ideal was a partly idealized caricature, was being adopted.

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[31] William O. Inglis, "The Rewards of the Law," The Canadian Law Review 1 (October 1901):41.

> The head of a modern successful law office sits in his private room like the head of a big corporation or the commercial general of a big department store. When a client has outlined the nature of his case, the law general presses the proper button. Forthwith there appears a third man in the continuation. He is the head of the particular department of the big law business that includes the specialty the client needs--the railroad department, the real estate branch, or whatever it may be. Thereafter the client sees this department man . . . .[32]

On a somewhat smaller scale than a Wall street firm, but nevertheless employing the same ideas of operation, the business of Colin Campbell's firm grew to include an impressive portfolio of clients between 1888 and 1900. Expertise in commercial and real property and investment concerns led eventually to solicitorships for the Bank of Hamilton, The Mutual Life of Canada, Landed Banking and Loan Company, The Toronto General Trust Corporation, The Home Investment Association of Manitoba, Reliance Loan and Savings Company and many others.[33] Division of responsibilities and the supervision of the work of juniors in the office of Campbell and Crawford allowed the firm to flourish. Neither man served in a public office in a way that would disrupt the management of the law business until 1899 when Campbell was elected MPP and shortly afterward was named both Attorney General and Minister of Education. By that time Campbell was able to leave the firm's management in the hands of his partner, turning his attention to public affairs, yet offering the firm the prestige of his political office and his business 'getting' capacities. The sudden and unexpected death of Crawford threw things into disarray, but in seeking to rearrange his affairs afterwards, Campbell's actions are most revealing.

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[32] Ibid.

[33] Newspaper Reference Book of Canada, Sketches of Representative Canadian Men (Toronto, 1903), p. 131.

Admitting that for the time being he was going to abandon his duties as Attorney-General "because I wish to get my own office in shape first of all,"[34] Campbell was soon answering letters from lawyers obviously hoping to improve upon their current situation. His negative replies were typically firm but polite. To one applicant from Toronto he wrote, "Your letters have been received, and I regret to say that I have arranged for the promotion of certain juniors in my office, which I think will cover about everything that there is available."[35] Accepting condolences from a business acquaintance who was an attorney in San Francisco, Campbell indicated the predicament created by Crawford's death. He shared privately that "I am in a dilemma how to fill it, but I trust to be able to do so as to retain the business that Mr. Crawford & I had labored so long to build up."[36] Not despondent enough to fail to see the void left by Crawford's death as a business opportunity, Campbell considered a replacement who had the potential to confirm his firm as among the most prominent in the province and the West. In a letter to a long-time associate, Alfred Hoskin, K.C. of Toronto, Campbell explained what happened.

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[34] P.A.M., RG3 A1, Attorney General Papers, Colin Campbell, Letterbook #3, Private, p. 354, Campbell to George Campbell, 24 August 1903.

[35] Ibid., p. 377, Campbell to William Norris, Toronto, 26 August 1903.

[36] Ibid., p. 454, Campbell to R. Masson Smith, 16 September 1903.

> I desired very much to get Mr. Isaac Pitblado in the firm as one of the senior members thereof, but owing to the fact that Mr. Aikins did not desire me to approach him, I was unable to do so. However, Mr. Pitblado himself approached me, and I have concluded an arrangement to take effect the 1st of November. Mr. Pitblado is essentially a commercial lawyer, and you are aware a large portion of our business is commercial.[37]

How Campbell actually began negotiating with Pitblado and the specifics of the deal are not revealed, but the shift represented one of the most important transfers of legal talent at the time. Pitblado was in every sense the rising star of the legal profession in Manitoba in the early twentieth century.[38] Under his guidance the firm that Campbell helped establish remained exceedingly important. In seeking men of Pitblado's calibre, Campbell could easily overlook potential stumbling blocks.

> Mr. Pitblado I may say in passing is a strong Liberal, but I have never allowed politics to enter directly or indirectly into business matters, but I agree that it would be desirable also, all other things being equal, to have a Liberal associated with me as senior partner.[39]

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[37] Ibid., p. 463, Campbell to Alfred Hoskin, K.C., 18 September 1903.

[38] An acknowledged expert in the grain trade and freight rates, he was nicknamed "Mr. Freight Rates." His papers are located in the Elizabeth Dafoe Library, University of Manitoba, Winnipeg.

[39] P.A.M., RG3 A1, Attorney General Papers, Colin

Together with the arrival of Mr. Erskine Hoskin of Toronto, which firmly cemented social and economic relationships with Canada's leading business centre, the reorganization of the firm was one that Campbell felt assured his clients would approve. Reconstituting legal firms with the impact of the Campbell "reconstruction"[40] was not possible for all lawyers, but they too were demonstrating all along their understanding of the need to be "in harmony with the needs of the day," claimed one Manitoba lawyer.[41] That understanding was that lawyers must, in addition to appreciating the legal issues involved in a case, be "able to instantly comprehend all the factors of a business difficulty with the same rapidity and completeness as a trained man of business could."[42] In the "age of efficiency," mastery of the intracacies of railroads, real estate and, of ever greater importance, the grain trade, were absolutely essential.[43] In the latter capacity, Isaac

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Campbell, Letterbook #3, Private, p. 461, Campbell to E. C. S. Huycke, K.C. (personal), 18 September 1903.

[40] Ibid., p. 475, Campbell to J. Turnbull, General Manager of the Bank of Hamilton, 21 September 1903.

[41] W. H. Trueman, "The Place of the Lawyer in the Business Life of Western Canada," Canada Law Times 37 (1917):99.

[42] Ibid.

[43] See, for example, D. J. Hall, "The Manitoba Grain Act: An 'Agrarian Magna Charta?,'" Prairie Forum 4, no.1 (Spring 1979):105-20; Alan G. Levine, "The Winnipeg Grain Exchange on Trial: The Case of the Grain Growers Grain Company Reconsidered," Prairie Forum 10, no.2 (Fall 1985):339-64.

Pitblado had no equals and added yet another dimension to a highly successful firm.

In the years between the turn of the century and the beginning of World War I, legal periodicals in Canada frequently carried articles written by senior members of the profession in Canada and the United States which offered advice to younger and less successful lawyers, presumably based upon the long and varied experiences of successful men of the law.[44] All of the articles stressed the importance of lawyers realizing that their activities in both the legal forum of the law office and courts, as well as in public, were critical to their success in the legal business. Few successful lawyers would have disagreed with their seniors that much of what was written simply made common sense. In the process of the modernization of law practice, for instance, many had adopted the notion that specialization was a more efficient way to operate and best serve their client's concerns. However, in another important respect, it would seem that lawyers had not yet generally adopted the most modern of operation methods, as their lack of organization and their failure to appreciate the value of systems in their law offices drew frequent critical comment in periodicals.

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[44] See Robert Riculfi, "Every Lawyer the Architect of His Own Fortune," Canada Law Times 30 (1910):672-76; Ralph Dempsey, "The Young Lawyer," Canada Law Times 31 (1911):646-53; C. H. French, "How to Build Up a Practice," Canada Law Times 32 (1912):654-58 and 911-19; and Lemuel H. Foster, "Building Up a Law Practice," Canada Law Times 33 (1913):238-47.

One of the critics and a frequent contributor of advice on the subject was Reginald V. Harris who gave Winnipeg as his home address. As late as 1907 he wrote in The Canadian Law Review that "of all businesses and professions the lawyer's is the last to come under the hand of the organizer."[45] He reminded his readers that since most lawyers "started their business in a small way," simple methods may have "become habits" which hindered growth and led to poor accounting methods and generally poor office management. Whether the firm consisted of "two persons or thirty-two persons,"[46] he saw it as essential that the law office have one person responsible for the entire management, whether a partner or an office manager. One Winnipeg firm was held up as a sterling example of how the system could work if the Managing Solicitor met regularly with the seniors of the firm.

> In one Winnipeg office such a meeting is held every Saturday afternoon. A notice of the meeting is left the day before on the desk of each one who is to attend the meeting. The senior partner acts as chairman and the Managing Solicitor acting as Secretary, brings various matters requiring advice and discussion before the meeting and makes minutes of the business transacted.[47]

In addition to the question of office management, lawyers were often reminded by experts that the methods usually employed to achieve various tasks in the office were not keeping pace with the demands of modern business.

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[45] Reginald V. Harris, "The Organization of a Legal Business," The Canadian Law Review 6 (October 1907):355.

[46] Ibid., p. 357.

[47] Ibid., p. 358.

> Mercantile, manufacturing and financial institutions have of late years adopted new and up-to-date methods in connection with the office part of their business. In many solicitors' offices are still the old-fashioned pigeon-holes and files while pleadings, affidavits, notices of motion, etc., etc., are placed in paper bags without regard to date or order, and thrown into a pigeon.[48]

The Toronto writer also stressed the importance of filing papers in a priorized manner and the safekeeping of client's documents, the need for a reliable method of collections and for handling the monetary records of the firm and even gave attention to more mundane matters such as the arrangement of office furniture to facilitate greater employee productivity. In the years to follow, Winnipeg writers gave practical advice on every aspect of office routine: incoming correspondence, use of typewriters, the stenographer's role, choice of stationery, details of effective letter writing, the role of the office boy, the organization of real estate collection and litigation departments, operation of the office library, the control of office supplies, advertising, making and keeping appointments and keeping a record of the time spent on each client's case.[49] The tone of the articles suggest some reluctance on the part of lawyers in implementing such schemes. It is, therefore, probably safe to assume that, by the turn of the century in Manitoba, most lawyers were well aware of the call to modernize their practices, but they were either not fully convinced of the benefits or were reluctant to change for other reasons. As might be expected, the largest firms were leading the way, but the ongoing revolution in organization and efficiency was far from complete.

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[48] James R. Roaf, "System in a Solicitor's Office,"The Canadian Law Review 3 (February 1904):70-77.

[49] H. V. Harris, "Organization of a Law Office," Canada Law Times 28 (1908):157, 284, 362, 445, 511, 605, 705, 807, 905 and 999; J. Howard Patterson, LL.B., "Practical Business Systems Adapted for Use in Law Offices," Canada Law Times 34 (1914):479-82.

Discussion determining what role lawyers could best play in public life reflected a similar tension between traditional attitudes and suggestions that a revision of some kind was needed. But the questions that were raised were obscured by the Manitoba School Question which dominated the public life of the province during the 1890's. Before it was resolved, the actions of lawyers acting as politicians, as litigators and as judges were visible and came under unusually detailed public scrutiny.[50] But as the names, especially of Gerald Brophy and J. S. Ewart, barristers for the aggrieved minority in the rather tortured path of the Barrett case and Brophy case from the Manitoba courts to the Privy Council, became better known to the public because of the school question, a corresponding evaluation of the impact that lawyers should have and the roles they should play was underway. Following the provincial election in 1893, Archer Martin lamented the fact that the profession held only eight of the forty seats in the legislature, which translated into only one-fifth of the total. He compared it unfavorably with the "Imperial House," where lawyers made up "one-fourth" of the total.[51] As much as lawyers may have wished to see the number increased, opinions expressed by laymen claimed that lawyers were the least fit occupation for elected office because their allegiance to tradition and precedents produced bad legislation. This, argued their critics, was because lawyers were unduly tempted by government patronage benefits and were out of touch with the real needs of farmers.[52] It was perhaps impossible to break such strongly held views and not worth the effort.

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[50] The most thorough examination of the issue from the standpoint of lawyers is W. T. Shaw, "The Role of John S. Ewart in the Manitoba School Question" (M.A. thesis, University of Manitoba, 1959).

More contemplative lawyers must have wondered about what part to play in the public realm, especially in light of the changing nature of law practice. In an address to the Ontario Bar Association in 1908, Hon. A. B. Morine, K.C., expressed thoughts which answered that query and which would have been equally applicable in Manitoba. In answer to criticisms that lawyers lacked practical knowledge, he offered the defense that "without the legal men to mould [sic] the legislation, suggestions flowing from the wisdom of the practical men would in large measure be stillborn."[53] Morine argued that being accustomed to translating the desires of clients into practical action, often being faced with the need to learn "something very accurately about many things and much generally about most things," as well as familiarity with all manner of men, equipped lawyers perhaps better than anyone for political life.[54] He turned his attention next to the considerations which very much entered into any decision to become involved in public life. Because of the mounting complexity of practising law, the days when it was possible to be a lawyer-politician and excel at both were quickly passing. Morine had challenged his listeners:

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[51] Western Law Times 1 (1890):63.

[52] Manitoba Free Press, letters to editor, 6 March and 13 February 1891.

[53] "The Place of the Bar in the Public Life of the Dominion," Canada Law Times 29 (1909):152.

> Think of any lawyer-politician of eminence whom you know intimately, and you will conclude that he would have been a greater lawyer if he had never spent an hour in politics . . . . I mean a lawyer of deeper research and technical knowledge, for as matters are to-day every minute of a full life away from office work is not too much for the work of keeping abreast of the legislation and decisions of the day."[55]

If a failure to keep abreast of the latest developments in the law would diminish the capacity of the lawyer to serve his clients, then public life must be viewed as an encumbrance rather than a benefit. Lawyers wishing to build large and successful urban practices, explained Morine, "cannot afford to enter Parliament" if they hope "to build or to retain a large practice in a city, surrounded by keen competition." However, there was an exception to the rule. "The already famous head of a large legal firm, or the specialist, whose reputation is already made, or the happy individual whose personal fortune is assured, may, of course, better afford to give to legislative duties that attention which the position demands." Morine thought that for the country lawyer to be a politician as well as lawyer was easier, since his competition was normally limited and his business more personal than complex or technical. He went on to contrast the changing nature of prominence for lawyers according to their locale and the stage of their career as he had observed them.

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[54] Ibid., p. 153.

[55] Ibid., p. 154.

> The prominence of leading city lawyers is not as a rule nowadays attained in the first place by their work as politicians, but strictly in their professions, and in ordinary legal business prominence in public life would not probably prove an attraction to clients . . . but to the town and country practitioner it is probably an advantage . . . .[56]

By implication, Morine's message for young men starting out in the profession was quite clear. They should not expect to follow exactly the same steps to prominence that their elders had because conditions had changed. For those who saw public life as a means to an end rather than service to the community, he had these thoughts to share:

> Prominence in public life is an advantage early in a professional career in this respect, that it brings the individual much more quickly before the people than any other thing, and if he can make clear his right to confidence by the public in his ability, he commences early the ascent of the ladder of fortune. If he wished to maintain that confidence unimpaired, and to increase his reputation as a lawyer, he will not await defeat at the polls before retiring, but will early and gracefully

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[56] Ibid., p. 155.

retire upon his early laurels as a public man.[57]

If Manitoba lawyers appeared to be ambivalent about entry into politics or if their involvement did not subscribe to any easily discernible pattern, part of the reason may lie in the variety and range of factors which came into play in making that decision in Manitoba. For the first lawyers in the province, some involvement in a public leadership role was a necessity, because the stipendiary or patronage aspects of the office were needed in order to meet financial obligations, or the higher profile was useful in attracting a clientele. But by the nineties both the changing nature of law practice and the economic viability of devoting one's time entirely to legal work made the decision to dabble in politics from behind the scenes easier than entering into the fray directly.[58]

Compelled by the complexities of the modern business of law to reappraise traditional ideas about combining law practice with political office, or in the case of judicial posts, making the decision to move on to the bench, lawyers were unwilling to abandon the legislative field to laymen. Lay legislators were often blamed for confusion or any lack of coherence arising from legislation and regulations. The mistrust of nonprofessional legislators probably came from two directions. According to Newman, the fear stemmed from the feeling that a gradual transfer of trusteeship was taking place thoughout the country. Men who understood the fundamental principles of common law and procedure were being joined and displaced by men perceived as having little regard for tradition. Newman explains,

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[57] Ibid.

[58] The problem continued. W. H. Trueman, "Lawyers and Public Life in Western Canada," Canada Law Times 35 (1915):203-4 laments their lack of involvement, even compared to their Eastern counterparts.

> The common law was viewed by many as an earthly embodiment of a higher spiritual law which had been revealed to men and held sacred over the centuries; the shift in emphasis to legislative law-making was a threat to its very existence. To admit that change could best be met by an enactment of the legislature was to admit the irrelevance of these immutable principles.[59]

On the other hand, businessmen entering into contracts and other business transactions were avoiding litigation because the law lacked the certainty they desired. Lawyers were undoubtedly aware of their clients' hesitancy. Reflecting on a problem that had emerged in the early years of the twentieth century, one western observer wrote

> The uncertainty of the law has been always proverbial, and it is natural that business men should be afraid of it . . . . Uncertainty does, however, seem to be established when a case goes from one Court to another with much variety of fortune, showing itself in hopeless disagreement among judges of equal eminence.[60]

He reminded readers that a "businessman wants finality and he wants it quickly."[61] In the face of the requirements of a modern society, the author of the article confidently wrote that common law was both flexible and adaptable enough to conform to "new conditions no matter how various and novel they may be." The fault, he thought, lay not in the judicial law or in legislation alone, but was "due to the failure of the judges to follow precedent and to leave reformation of the law to the action of the legislature."[62] Whether apportioning blame, actively seeking solutions or balancing the stresses of preserving the inherent wisdom of traditional approaches against legal requirements of a modernizing province, Manitoba lawyers were not immune to thinking about this admittedly diffuse and perplexing problem. Glimpses in the historical record reveal both unhappiness with the existing systems and a mild impulse to support various reforms by 1900.

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[59] Newman, "Reaction and Change," p. 64.

[60] Trueman, "Lawyers and Public Life," p. 97.

[61] Ibid., p. 98.

When Archer Martin began in 1890 to call for reforms to end the confused state of civil procedure in the province, he was giving voice to a concern not shared to the same degree by the public or by all lawyers. He applauded the simplification of procedures in County Courts when the legislature passed the County Courts Act in 1891.[63] But an even larger roadblock remained. When the Court of Queen's Bench was established in Manitoba, the functions then accommodated under separate courts of equity and common law in England and Ontario were combined because of the lower expense involved. It proved to be a false economy, for in practice a cumbersome division of equity and common law was maintained and the court was treated as having two "sides," each with different rules. Dale Gibson summarized the problem.

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[62] Ibid., p. 101.

[63] Western Law Times 2 (1891):36.

> Different rules were established for each side of the Court, and when a litigant sought an equitable remedy, such as injunction or specific performance, he was required to employ different procedures than he would follow in seeking a common law remedy, like damages. Moreover, there were many substantive provisions applicable to proceedings on the equity side that had no common law equivalent.[64]

Judicature Acts passed in England and in Ontario ended the troublesome distinctions of the dual system there by fusing law and equity into one jurisdiction. In the wake of those reforms, J. S. Ewart and W. E. Perdue began calling for an end to Manitoba's procedural anomalies.[65] The only notable improvement occurred in 1886 when legislation made it possible to bring an action on the common law 'side' and to be granted an equitable remedy.[66] Archer Martin was far from satisfied. He wrote, "With slight modifications, the people of Manitoba have to rely on the law of England, as it existed, almost forty years ago. In other words, our civil procedure is mainly that of the Common Law Procedure Act of 1852 . . . ."[67] After reviewing some of the difficulties arising out of the lack of simplicity in civil procedure,

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[64] Substantial Justice (Winnipeg, 1972), p. 180.

[65] Manitoba Law Journal 1 (1884):27; W. E. Perdue, "The Fusion of Law and Equity in Manitoba," Canada Law Times 2 (1882):428-31.

[66] Statutes of Manitoba, 1886, 49 Victoria, c.14.

[67] Western Law Times 1 (1890):115.

Martin exclaimed in exasperation, "the rules of court common law and equity are in a state of barbarous confusion."[68] His solution was the adoption of a Judicature Act to bring into effect the desired fusion. In addition to simplicity and greater certainty in judicial proceedings, Martin thought that to be out of step with other jurisdictions was a great disadvantage.

Overstating his case with characteristic stridency, he underlined the legal consideration.

> It is extremely unwise for a new country to have a system of laws unlike any other country. The result is that the benefit of current judicial interpretation and legislation is utterly lost. Radical differences would be a curse to this country in the future, as it has been in the past. For the last ten years, except our own decisons and those of Ontario, we have had the wealth of current English decisions on civil procedure, completely closed to us since 1873.[69]

G. W. Baker, a lawyer and former alderman of Winnipeg, was also in favor, writing "we are really awakening to the fact that in respect of our Court procedure we are ages behind those who inhabit other parts of Western America; . . . and that our natural progressiveness will not admit much delay."[70] But in his article, Baker also reflected the general reluctance of the profession, as expressed in a bar meeting on the subject, to accept any change without a detailed and careful study beforehand.

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[68] Ibid., p. 119.

[69] Ibid. In 1873 the Judicature Act of England established the Supreme Court of Judicature. It united the High Court of Chancery, the Courts of Queen's Bench, Common Pleas and Exchequer, the High Court of Admiralty, the Court of Probate, the Divorce Court and the London Court of Bankruptcy. A similar act was passed in Ontario in 1881.

[70] G. W. Baker, "Shall We Introduce the Judicature Act?," Western Law Times 2 (1891):228.

Early in 1894 it became apparent that the provincial government intended to pass a Judicature Act, but without consulting the legal profession. Hearing of this, the editor of the Western Law Times demanded, "now what is the necessity for this unseemly haste? And further why has this thunderbolt dropped out of a clear sky and who is responsible for the dropping?"[71] The earlier editorial position taken by Archer Martin had been reversed. Angered that there had been none of the extensive consultation with members of the profession which they thought the question demanded, the Times lashed out: "The legislature of this province, largely composed of farmers, is not a fit body to speak plainly, to deal intelligently with the question . . . ."[72] That untrained legislators guided by a few lawyers of low repute in the legislature should be considering such a momentous change was bad enough, but even more grating was the suspicion that the reason for introducing the legislation was even more perfidious.

> The impression has got abroad than [sic] the frantic desire to introduce the Judicature Act without a proper consideration of other systems emanates from one or two members of the profession who have recently come from Ontario where the act is in force, and find themselves a little out of it here. One of these members is now a partner of the Attorney-General himself.[73]

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[71] Western Law Times 5 (1894):5.

[72] Ibid.

[73] Ibid., p. 6.

The editors now adopted the view that the current system would be less expensive than the reform envisioned, there were few delays and local judges and court officials were well adapted to the present system which was actually a refinement of the Common Law Procedure Act of England (1852). They argued that many of the problems with procedure had already been ironed out by minor legislative modifications. To adopt a Judicature Act and the major revision it promised simply because other provinces had did not make sense. As for Archer Martin's earlier objections that Manitoba would lack the benefits of current judicial interpretation and legislation on civil procedure if it did not fall into line with Ontario, he now found his own arguments specious, since, he wrote, "such practice cases are so very few in number that they are not worth mentioning."[74] Lawyers against the measure pointed to evidence of serious difficulties in the operation of the Judicature Act in England and Ontario, warning that introducing the proposed legislation would not lead to any "legal Mecca."[75] Clifford Sifton, the Attorney General, wisely withdrew the bill and began a round of consultations with lawyers. When the amended bill was reintroduced for passage in 1895, sombre warnings were sounded that merchants who were already avoiding the courts and litigation would be even less inclined to seek remedies in the courts because of new uncertainties regarding outcomes. "Litigation nowadays is mainly resorted to by insolvent corporations, men who have nothing to lose in litigation and never pay costs if they lose, and married women."[76] Despite reservations about the new Queen's Bench Act, editors of the Times found the code "satisfactory," crediting Sifton with "commendable zeal and diligence in attempting to render justice more easily attained."[77]

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[74] Ibid., p. 7.

[75] Ibid.; Winnipeg Tribune, 31 January and 3 March 1894.

The entire episode was but another example of the issues the legal profession was forced to react to as the century drew to a close. Simplification of civil procedure, whether viewed as a valuable reform or not, was similar in many respects to efforts to codify the law or to establish greater uniformity in legislative enactments between jurisdictions.[78] Pressures exerted to bring about change frequently met with resistance of some kind, and had to be rationalized in some way, either as a way of enhancing individual freedoms or more frequently, to facilitate the requirements of business. S. W. Seton summarized best the thinking of his era in 1900 when he wrote

> In the industrial world of today the interests of trade and commerce are necessarily paramount . . . . The business community has a right to require that the common law of every civilized country shall be readily

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[76] Western Law Times 6 (1895):56.

[77] Ibid., p. 65.

[78] B. Russell, K.C., M.P., "Uniformity of Provincial Laws," The Canadian Law Review 1 (October 1901):5-14.

> accessible, easily understood, and inexpensively and promptly administered.[79]

Efforts in Canada to codify procedure and law in criminal matters received scant attention in Manitoba. The impetus for change which culminated in the passage of the Canadian Criminal Code 1892 flowed from different concerns than those on the civil side,[80] but in one important respect its passage emphasized that any effort to simplify or codify involved the question of whether legislatures or courts would be the originators of legal change. In the case of the Criminal Code, R. C. Macleod found that although not presented as a reform, it was indeed one, and that its passage weighed heavily in favor of Parliament being the principal source of changes in criminal law.[81] Regardless of who originated the change, the impress of societal change demanded legal improvements.

Lawyers in Manitoba would continue to consolidate the prerogatives of the profession in society and to rationalize their responses to the challenges of modernity after 1900, but the era was the first one in which these imperatives were established as the dominant tone. Their status confirmed and responses tried, prominent legal professionals were at the center of Manitoba's economic and public life. They had become "insiders."

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[79] S. W. Seton, "Uniform Legislation," Canada Law Times 20 (1900):187.

[80] See Desmond H. Brown, "The Canadian Criminal Code 1892: A Comparative Study in Codification" (Ph.D. dissertation, University of Alberta, 1986); Graham Parker, "The Origins of the Canadian Criminal Code," Essays in the History of Canadian Law, vol. 1.

[81] R. C. Macleod, "The Shaping of Canadian Criminal Law 1892-1902," Canadian Historical Association Historical Papers (1978):68.

CHAPTER XI

LATECOMERS: CONFIRMING THE STRUCTURE OF PROMINENCE, 1888-1900

W. L. Morton used the term 'insider' to characterize the most prominent members of Manitoba's economic and professional elite in the first decade of the twentieth century. With access to such prestigious organizations as the Manitoba Club symbolizing their success, members and associates had successfully forged a strong sense of local identity and a confident self-assurance of their place in Canada. According to Morton, the legal profession also had grown to the extent that "wealthy firms and powerful counsel served the grain trade, the railways, and the real estate business with great profit in money and prestige," some of their number even acquiring "national reputations" along the way.[1] Morton's 'insiders' in most instances had been 'newcomers' who were by now well-established. Occasionally they were joined by more recent members of the bar who had gained a notable reputation in a shorter time. In any event, the concept of 'insider' as Morton employed it, suggests a rather narrow application. In this chapter the term receives a broader application and includes those who entered the Manitoba legal fraternity as ‘latecomers’ between 1889 and 1900 and were either prominent or destined to become so, as well as a large contingent of very active and influential ‘newcomers’ from the previous decade. However, since an earlier chapter presented a structural profile of the ‘newcomers,’ this chapter begins by describing the newest members of the profession.

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[1] Manitoba: A History, p. 303.

TABLE 11.1

FIFTY NEW ‘INSIDERS’

Henry L. Adolph
Edward Anderson
Fletcher S. Andrews
Gregory Barrett
Joseph Bernier
Robert A. Bonnar
Archibald Campbell
John A. Campbell
Robert A. Clement
Stephen Emmett Clement
Fred Davis
Alexandre Dubuc
Alan Campbell Ewart
David Forrester
Thomas L. Hartley
James Harvey
Frederick Heap
Harold Hooper
Edmund Howell
Frederick Hubbard
Albert B. Hudson
John Thompson Huggard
William Hull
Theodore Hunt
Thomas H. Johnson
J. Hillyard Leech
Edwin Loftus
Frederick McArthur
William McCreary
Daniel McKerchar
Alexander McLeod
Alexander McPherson
John A. Machray
Egerton Marlatt
Thomas G. Mathers
Robert M. Matheson
Thomas L. Metcalfe
George Minty
Isaac Pitblado
Hugh Phillips
Stephen E. Richards
Herbert E. Robison
Hugh A. Robson
Samuel J. Rothwell
Henri C. Royal
E. E. Sharpe
John Obed Smith
Edmund L. Taylor
Fawcett Gowler Taylor
Henry W. Whitla

Only two out of the fifty lawyers, Alexandre Dubuc at St. Boniface and Egerton Marlatt at Portage la Prairie, were born in Manitoba, but the majority entered the province as children, before reaching the age of sixteen. For the thirty lawyers who emigrated to Manitoba as children, their reasons for coming were their parent's reasons. Joseph Bernier and Henry Royal were young children when their fathers came West from Quebec to represent the interests of the French Catholic population. Alan Campbell Ewart, Edmund Howell, John Thompson Huggard and Stephen Richards were similarly born into legal families, their fathers having emigrated from Ontario in order to enhance their careers. Isaac Pitblado, fifteen when he arrived, was also from a professional family. His father, Rev. Charles Bruce Pitblado, accepted the call to St. Andrew's Presbyterian Church in Winnipeg and moved his family from Nova Scotia, thus interrupting Isaac's studies at Dalhousie University, which he had precociously begun at age fourteen. Others who arrived as youngsters were part of the steady stream of mainly British protestant emigrants who peopled the remaining agricultural districts of the province during the eighties and nineties. Robert and Stephen Clement, for example, experienced homesteading in the Shoal Lake region, beginning in 1880, while Thomas Johnson, nine in 1879, came with his parents from Iceland to the Icelandic community of Gimli.

The eighteen men who came to Manitoba as adults were young when they did so, none being older than thirty when they arrived. Where factors can be determined, their identified reasons for emigrating varied. William Hull and George Minty were recruited by the firm of Aikins, Culver, Patterson and McLeneghan, while T. Hunt was transferred by the legal department of the CPR to Winnipeg. Others were first attracted by employment opportunities outside the profession; one accepted the principalship of a school, another the editorship of a paper and a third a position as a grain dealer in Portage la Prairie. William McCreary served as secretary to Lieutenant Governor Dr. John Christian Schultz, another was named deputy registrar at Crystal City, while another four men took up homesteading briefly. Their fling with homesteading, however, may have been more speculative than based upon any real desire to pursue farming.

An examination of the geographic backgrounds of Manitoba's newest lawyers reveals few structural changes in that Ontario again led the way as a point of origin. Thirty-three lawyers were from Ontario and three were from Quebec, although many were too young to have imbibed and transmitted the values and attitudes of those provinces to Manitoba to the same degree as the 'newcomers' had before them. The Maritimes accounted for two in the cohort and the United Kingdom four, but for the first time, an immigrant born outside the Empire, Thomas Herman Johnson, born in Iceland, qualified for entry into the profession. The breakthrough was but a portent of things to come as lawyers began a decade later to come from outside the traditional ethnic boundaries of the French Canadian and English Protestant communities. After 1900 Jewish, Ukrainian and other immigrants, were represented in greater numbers in the legal profession.[2]

As with the 'newcomers' before 1888, the linkage between identifiable paternal ethnicity and religious affiliations remained strong for lawyers beginning their professional life in Manitoba between 1888 and 1900. Of the four lawyers belonging to the Roman Catholic faith, three were French Canadian. English, Irish or Scottish parentage was most frequently tied to Anglican, Methodist or Presbyterian affiliations for the forty lawyers belonging to a Protestant denomination; eleven Anglicans, fourteen Presbyterians, eleven Methodists and for the first time, three Baptists and one Lutheran were represented. Little in fact had changed in the structure of ethnicity and religious affiliation and the pattern established by the 'newcomers' was largely confirmed by the new 'insiders.'

In the case of thirty-four of fifty lawyers it is possible to examine generational changes in the occupations of fathers and sons. A relatively high degree of continuity was maintained as well in the structure of social mobility during this period for again, as in the case of the 'newcomers,' eight lawyers were able to follow their fathers into law practice and enjoy the obvious benefits of the suitable articles and partnerships that their fathers might arrange for them. Yet in some cases they remained very much in the shadow of their prominent fathers. That Manitoba's lawyers were reproducing themselves is clear but it appears to have been more common in some families than others. In this cohort, outside of legal homes, the absence of other professionals among the fathers is notable. None of the lawyers, for example, were sons of medical practitioners and only one was the son of a clergyman. The largest number were from homes led by fathers listed as farmers or businessmen, men familiar with the increasingly complex nature of land and commercial transactions. Unable to impart professional attitudes or behavior to their sons, they undoubtedly understood that intergenerational occupational mobility and, therefore, status could be maintained or enhanced by pursuing careers as lawyers. This was no less true for the remaining fathers: a sheriff (the father of two lawyer sons), a court clerk, a municipal accountant and an apothecary.

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[2] In the Jewish community, Elisha Cohen, M. J. Finkelstein, S. Hart Green, Elias Levinson and Max Steinkopf entered the legal profession before World War I. Henry Trachtenberg, "The Winnipeg Jewish Community and Politics: The Inter-War Years, 1919-1939," H.S.S.M. Transactions, ser.3, nos.34 & 35 (1977-78 & 1978-79):115-53 is a reliable guide to developments in that community. Jaroslaw William Arsenych, who was born in the Ukraine, was the first Ukrainian to be admitted to the bar in Canada in 1917. He was made King's Counsel in 1934 and appointed County Court Judge in 1947.

By the nineties a significant change had occurred in the structure of educational backgrounds. Reflecting the youthfulness of most of the lawyers in the grouping when they arrived in Manitoba, the number who had attended preparatory colleges or universities outside of Manitoba was very small. David Forrester attended Albert College, Belleville, Ontario and Hugh Phillips attended both the Isle of Wight College and Heidelberg University in Germany before returning to Manitoba to complete his education. Two lawyers attended the University of Toronto, one Queen's University, Kingston and Isaac Pitblado had begun his studies at Dalhousie University. One of the more unusual educational routes was that followed by Robert Bonnar.[3] According to his biographer, he dreamed of becoming a criminal lawyer like the famed Montague Williams of the Old Bailey, London. As part of his preparation for that role, he believed a knowledge of medicine was essential. He served articles under his brother, who was a physician in Ontario and at the same time Bonnar enrolled in Trinity Medical School, Toronto. In Manitoba his dream was realized, first studying under and then joining in partnership with Nathaniel Francis Hagel in Winnipeg, the premier advocate at the bar, before becoming one of the best known criminal lawyers in Western Canada himself. The educational route followed by Thomas Johnson, who was later Attorney General, saw him travel south to the United States to study with fellow Lutherans at Gustavus Adolphus College, St. Peter's, Minnesota before returning to a career in law in Manitoba. He was the only lawyer in the group to study in the United States.

The most dramatic change from the previous decade was in the numbers receiving their higher education in Manitoba. Where only one 'firstcomer' was educated locally, the vast majority of the new 'insiders' attended Western institutions.[4] For young Franco-Manitoban lawyers Joseph Bernier, Alexandre Dubuc and Henri Royal, whose fathers had attended various classical colleges in Quebec, St. Boniface College served as the Western substitute. St. Boniface, together with Manitoba College (Presbyterian), St. John's College (Anglican) and Wesley College (Methodist) were federated, denominational and under the mantle of the University of Manitoba, which, after 1877 was empowered to examine students and grant degrees. All the teaching took place in the colleges, however, and the public identified with the faculties and buildings of their respective denominational school.[5] Ten prospective lawyers received their baccalaureate education at Manitoba College and three each at St. John's and Wesley Colleges. Only one lawyer attended the Baptist Brandon College, then affiliated with McMaster University in Hamilton. He did so more out of convenience than religious convictions it seems, as both he and his brother also attended Wesley College in Winnipeg, which was more in keeping with their Methodist faith. The preferred educational route for young men seeking to become lawyers was to first obtain the advanced standing provided by a B.A. degree. Four lawyers attended only high school before embarking on their legal career, and one attended Normal School rather than college.

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[3] For biography see Roy St. George Stubbs, "Robert Andrew Bonnar, K.C.," Manitoba Bar News 10, no.4 (December 1937):497-505.

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[4] For an American comparison, see Jack Northrup, "The Education of a Western Lawyer," American Journal of Legal History 12 (1968):294-305.

[5] A. B. Baird, "The History of the University of Manitoba," Manitoba Essays, ed. R. C. Lodge (Toronto, 1937) is a useful guide to these developments.

Among the fifty lawyers entering the profession during this time, biographical information reveals that seventeen had not moved directly into positions as articling students as adults but had pursued other occupational choices first. The financial, familial status or intrinsic enticements governing decisions to pursue other careers are unknown in these cases, but these alternative employments were normally of short duration. Thirteen had been teachers, ten in schools in Manitoba and three in Ontario, suggesting a degree of continuity with earlier arrivals to Manitoba in their pre-law experiences. The remaining pre-law experiences, which were all Manitoba-based, included real estate agency, newspaper editing, employment with the CPR and working as a storekeeper's clerk. For the majority of intending lawyers entering articles directly following their general education, the ability to make that choice was both a measure of their ambition and their relative affluence; the level of preparatory education required for law and the encouragement to pursue it was not readily available to Manitobans of all socio-economic or ethnic backgrounds.

In legal education the most significant change that occurred since the previous decade was that Ontario had ceased to be the province in which the majority of lawyers received their articling experience. Only three of fifty new 'insiders' received their legal education under the auspices of Osgoode Hall. The waning direct influence of the Ontario system is difficult to gauge, but the Manitoba system of apprenticeship, which largely mirrored that of Ontario, remained unchanged. The majority received their articling experience under the rules and examinations administered by the Law Society of Manitoba. The single exception was H. A. Robson, who had settled first in Regina, where he articled in the office of D. L. Scott, Q.C. and was called to the Bar of the North West Territories in 1892. In 1898 he was appointed assistant deputy attorney general under the Hon. F. W. G. Haultain, premier, a lawyer whose career in the territories and Saskatchewan was intimately tied to political developments there.[6] In 1899 Robson resigned and moved to Winnipeg to join the firm of Aikins, Culver and Company. The most common approach to the profession saw students-in-law begin their careers in the offices of one of the more prominent firms in Winnipeg. Out of thirty-seven Manitoba students surveyed, twenty-nine had begun their careers in Winnipeg, while eight began in the larger firms in smaller centres like Portage la Prairie or Brandon.

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[6] Robson paid tribute to his mentor many years later. Chief Justice H. A. Robson, "Sir Frederick Haultain," Canadian Bar Review 22 (October 1944):643-51. See also Lewis H. Thomas, "The Political and Private Life of F. G. Haultain," Saskatchewan History 23 (Spring 1970):50-58; Stanley Gordon, "F. W. G. Haultain, Territorial Politics and the Quasi-Party System," Prairie Forum 6, No.1 (Spring 1981):1-16; and Grant MacEwan, Frederick Haultain (Saskatoon, 1985).

Once their legal education was completed and they had been admitted to the profession, young lawyers in Manitoba faced the reality of building up a practice either in partnership with other lawyers or on their own. For some of these 'latecomers,' the choice of where to practice was made simpler because family members were already well-placed or their talents made them highly desirable additions to existing firms. It is quite likely, however, in choosing the most desirable circumstance for themselves, that the words of C. H. French, written some years afterward, would ring true as having been part of that consideration.

> In a large city, for a young man to 'hang out his shingle' means to starve, unless he has unusual connections. The next alternative is a clerkship, or a polite connection with a well-known firm, in which capacity he will be an underpaid office boy. Naturally many take the clerkship, which gives them a salary and makes acquaintances; but the salary is not commensurate with the amount of work required. Your brains go to make the laurels of the firm. The acquaintances you make are of business men whose patronage has been given to this or that firm probably for many years, consequently they are not prospective clients of yours and never will be. In this position a man is poorly paid and stands little chance of advancement. In a smaller town the same things is true though in a less degree.[7]

As might be expected, the fifty newest lawyers to rise to prominence who were selected for this study reflected the settlement pattern in the province, as more lawyers chose to reside and practice in smaller centres throughout the province. Nevertheless, Winnipeg remained the legal hub and the greatest number of prominent lawyers resided there. The amount of business available in larger centres such as Winnipeg and Brandon of course governed the spatial placement of lawyers. The centripetal attraction of courts and other legal services were also considerations. But the growth of towns in the province by 1900 contributed to making them more attractive locations for establishing and 'building' a career.[8] In the cases where it is possible to identify the main geographic location of the practices of full fledged lawyers, the pattern yields few surprises. Of twenty-five lawyers who articled in Winnipeg, seventeen remained there, with eight leaving to practice in smaller centres. Robert A. Clement of Brandon, for example, gained his experience with Aikins, Culver and Company in Winnipeg and returned to Brandon to form a partnership with Clifford Sifton. His younger brother, Stephen E. Clement, following in his brother's footsteps, joined the firm several years later. Lawyers who gained their articling experience in places such as Brandon or Portage la Prairie were less likely to follow a career path leading to Winnipeg. Two lawyers eventually did but they were exceptions. In six other cases where lawyers began in smaller urban settings they normally remained in that town, as did Robert M. Matheson in Brandon and David Forrester in Emerson. In two cases, lawyers who began in Brandon, moved to even smaller communities: Gregory Barrett to Carberry and Herbert Robison to Carman.

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[7] C. H. French, "How to Build Up a Practice," Canada Law Times 32 (1912):654.

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[8] In Minnedosa, for example, three lawyers shared the insurance and loan business of nineteen different companies in 1889. See note # 41 in Barry Potyondi, "In Quest of Urban Status: The Town-Building Process in Minnedosa, 1879-1906," Town and City, ed. Alan Artibise (Regina, 1981), p. 145.

For lawyers starting out in the profession in Manitoba after 1888, marriage remained socially important. In the cohort of lawyers for whom information is available, only Thomas L. Metcalfe, better known for his work on the bench during the trial of R. B. Russell for seditious conspiracy and in the trial for sedition of seven other strike leaders in the Winnipeg General Strike, remained single throughout his life. More commonly, lawyers married several years after their call to the bar (the average age was 31.3) when they could offer wives the style of home expected of a professional man. In seeking suitable marriage partners, Manitoba had become the main source of brides, but six men found wives in Ontario, one in British Columbia and two in the United States. French-speaking lawyers Joseph Bernier and Alexandre Dubuc, however, married women from Quebec. From the limited evidence available it is not possible to arrive at firm conclusions concerning the social mobility enhancement or maintenance achieved by the wives of these lawyers, but the high level political and professional elite linkages so evident in several families among the 'firstcomers' had diminished as a factor in this grouping of legal gentlemen. In choosing wives from

Manitoba with increasing frequency and in establishing households in the province, these young lawyers were confirming the identification of legal families with the West, giving them a character unlike that found in the first provinces in Confederation.[9]

The pattern of political involvement by the new 'insiders' remained consistent with the general outlines established by their predecessors between 1878 and 1888. Practicing law rather than running for and being elected to an office of any kind during their careers was the choice of thirty lawyers. Of those who chose to stand for elected office, three were elected Members of Parliament and seven served as members of the provincial assembly, two as cabinet ministers. Reflecting the importance of a legal practitioner's impact upon many of the smaller municipal communities in the province, those serving as alderman, mayors or elected school board officials would more often serve in Brandon, Carberry, Dauphin, Selkirk or Portage la Prairie than in Winnipeg. Supporting the aims of political parties and working for the party in an organizational capacity and in electioneering activity continued to be popular with lawyers. Of those declaring a political affiliation, the Liberal party was the most popular, with twenty-four, compared to seventeen Conservatives. One of the most obvious indicators of political benefit realized through political involvement was appointments of Q.C.'s. During their careers, twenty-seven of the fifty lawyers, or over one-half, received silk. Though a less direct political benefit, elevation to the bench affected twelve members of the cohort. In Manitoba four men served on the Court of Queen's Bench, with Thomas Mathers and Hugh Robson each serving as Chief Justice as well. Two were appointed to the bench of the Juvenile Court,[10] one to the surrogate court and one as a police magistrate. Albert Blellock Hudson was later named a Justice of the Supreme Court of Canada in 1936.

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[9] A. McLeod, "The New Canadianism," The Canadian Law Review 2 (June 1903):542-46.

Following the example set by lawyers who began professional life in Manitoba before them, lawyers rising to prominence after 1888 demonstrated a similar enthusiasm for joining clubs and organizations. As was the case with the 'newcomers,' they were convinced of the professional and business benefits of belonging and must certainly have been aware that the most "potent"[11] minority of the pioneer population often moved easily from one forum of leadership, service and organizing to another in the institutions that were molding community life. Membership in the prestigious Manitoba Club remained important for many of Winnipeg's aspiring and younger lawyers, but in time it became more exclusive and lawyers were increasingly identified as members of the Carleton Club and St. Charles Country Club as well. Lawyers situated outside the metropolis of Winnipeg and towns large enough to create replicas of private clubs like the Brandon Club, joined commercial clubs or found other avenues for meeting people, in fraternal organizations, for example. Among those lawyers whose biographical profile reveals membership in fraternal organizations the Masons remained the most popular choice with the International Order of Foresters a close second. In Winnipeg, lawyers devoted themselves most often to one society and sometimes two, while lawyers in smaller communities occasionally belonged to more than two. H. E. Robison of Carman, for example, was a Mason and also belonged to the Knights of Pythias and the Ancient Order of United Workmen, eventually also serving on the Board of Trade, as town councillor and as Mayor.

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[10] See Roy St. George Stubbs, "The First Juvenile Court Judge: The Honourable Thomas Mayne Daly, K.C.," H.S.S.M. Transactions, ser.3, no.34-35 (1977-78, 1978-79):49-66.

[11] Mott, "The British Protestant Pioneers," p. 25.

Athletic and various recreational clubs remained important avenues of social transaction as well. In order to establish organized competitive games, a measure of cooperation was required, but in the case of team sports a fairly common configuration saw the team made up of what Carl Betke has termed a "non-sport interest group"[12] based upon ethnicity, religious affiliation or an employment category. In the case of young Winnipeg lawyers beginning in the profession during the 1890's, this was especially true. Rather than being merely a form of relaxation, team sports participation linked lawyers with their occupational role, and displayed the rugged competitive nature of those who engaged in them.

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[12] Carl Betke, "The Social Significance of Sport in the City of Edmonton in the 1920's," eds. A. R. McCormack and Ian McPherson, Cities in the West: Papers of the Western Canada Urban History Conference (Ottawa, 1975), pp. 211-235.

A case in point was hockey, which gained enormous popularity during the decade.[13] It was played by teams of seven with no substitutes, frequently on poor ice surfaces without lines, with limited padding and with the play interrupted often by arguments over rules. Spectators were drawn to it because of its celebration of 'manly' attributes. Hockey, it seemed, was tailor-made for young lawyers. In addition to requiring physical attributes like speed, strength and endurance, hockey, like lacrosse and rugby, was praiseworthy because it tested mental and moral traits as well.

In a Saturday afternoon hockey match in January 1894, a team of lawyers played the Imperial Bank staff to a tie.[14] The Free Press reported that at half-time the Bankers were ahead by a score of four to two, but the

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[13] Morris Mott, "Flawed Games, Splendid Ceremonies: The Hockey Matches of the Winnipeg Vics, 1890-1903," Prairie Forum 10, no.1 (1985):169-87.

[14] Manitoba Free Press, 30 January 1894. The members of the Legal Team were as follows:

F. Mulvey	Goal
R. A. Clement	Point
W. Jackson	Cover Point
Rothwell, I. Pitblado, Bradley, Maulson	Forwards

lawyers fought back, perhaps drawing upon more than their mental and moral traits. "Both teams then retired to their respective rooms and what stimulants the legal lights then got remains a secret to all but themsleves." But for the remainder of the game, they played much better. The following January it was teams from the offices of Macdonald, Tupper, Phippen & Tupper and Aikins, Culver and McLenaghen who took to the ice. The game gave every indication that young and would-be lawyers could be formidable opponents on the ice as well as in the courtroom.

> The teams were late in lining up, owing to McFarline [sic] objecting to Long, the A. C. & L. [sic] goal keeper, playing with a stick the blade of which measured fifteen inches across and was twenty-four inches long. This objection was withdrawn after Long had whittled the blade down to something like proper proportions and the game commenced, R. C. Irving acting as referee. Cheered on by their employers, the M. T. P. & T. boys worked heroically, McDougall and McFarline [sic] being very aggressive. The off side rule was violated in a most flagrant way by both teams, and the referee at last decided that if the rule were enforced, play would have to stop altogether. The puck travelled so fast that the players had great difficulty in keeping it in view. McDougall scored for the M. T. P. & T. team by a pretty run down the centre, and McFarline [sic] put through another just before half time. During the second half one of the M. T. P. & T. team returned with a frozen toe, and one of the opposing team hobbled about with cramps in the calves, still the puck was kept moving. The A. C. & McL. boys worked harder than ever, but their side lacked combination, and their efforts to place the puck between the sticks were unavailing, McDougall and McFarlane, by means of long shots and numerous infringements of the off side rule, added three more goals to their total before time was called, and the referee, who had had no little difficulty in escaping with his life during the game, is of the opinion that the students of the law know more about the Manitoba statutes than hockey.[15]

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[15] Manitoba Free Press, 29 January 1895.

Older lawyers relegated to the sidelines as spectators in such vigorous competitive team sports were sometimes patrons,[16] but more often chose less strenuous social sports that encouraged conversation such as golf,[17] which began in earnest during the 1890's, or the 'manly' martial art of shooting. In the case of shooting, Archer Martin was not amused that the long vacation for the courts did not fall in the "hot oppressive" months of July and August, but that the legal vacation included the month of September. He explained the reason why:

> The month of September was made part of vacation by the efforts of a few ultra-enthusiastic sportsmen who wanted to get off for the shooting in that month and didn't care how the change affected the rest of the profession who were too apathetic at the time to watch the legislation going through the House. Now, we are fond of sport and enjoy nothing better than a few days shooting, and we can cheerfully sit all day in a reed bed with a jug of whiskey and a half-breed, and keep up a merry fusilade at the tails of such indifferent ducks as may thoughtlessly meander by.
>
> This enthusiasm, however, is of a mild type and if we cannot manage to get away then we do not want to keep the whole profession stewing during July so that we can have the privilege of helping fill up a marsh with bird shot in September.[18]

That the business of the courts could be held up because of the interests of a few "ferocious sportsmen" was in Martin's mind clearly out of keeping with the progressive modern image of law practice that was becoming commonplace.

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[16] P.A.M., RG3 A1, Attorney General Papers, Colin Campbell, Letterbook #3, Private, p. 791, Colin Campbell to Percy G. Bell, Secretary Treasurer of Manitoba Hockey Club, 7 July 1903.

[17] P.A.M., MG14 C6, Minnie Campbell Papers, Box #2, Colin to Minnie, 2 July 1900. "This evn'g [sic] I am going to Prof. McDermids for tea & a game of golf thereafter. It is too hot that I think we will not have much golf."

[18] Western Law Times 2 (1891):97-98.

For the younger members of the profession, their most distinguished years of community involvement and service lay in the future, after 1900. St. Boniface lawyers Joseph Bernier, Alexandre Dubuc and Henry Royal remained loyal to the preservation of French Canadian heritage, while many others in the coming years sat on boards of directors or management of colleges and hospitals.[19] Several contributed articles to legal periodicals, popular magazines and to the newspapers, but authorship was not widespread.

During the nineties the members of the legal profession most prominent in community leadership positions and social action were the more established 'newcomers.' Besides offering legal and personal opinions on both sides of the school question, several had a notable involvement in the developing liquor question.[20] William R. Mulock, a prominent lawyer, became a constant proponent of the gospel of temperance. In early January 1890 he was the keynote speaker at a temperance meeting in Albert Hall, using the occasion to counter the view that the miracle at the wedding at Cana was an endorsement by Jesus of wine drinking, arguing from religious conviction that fermentation was unnecessary for wine to be good.[21] Two years later, as president of the Manitoba Temperance Society, he and his followers successfully petitioned the Liberal government of Thomas Greenway to conduct a plebiscite on the question of prohibiting the importing, manufacturing and sale of intoxicating liquor. Archer Martin of the Law Times raised objections as to the legality of a plebiscite.

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[19] In a full list of representatives of the Colleges on the University Council the names of prominent lawyers stand out. Manitoba Free Press, 7 September 1894.

[20] The most comprehensive treatment is John Thompson, "The Liquor Question in Manitoba, 1892-1928," (M.A. thesis, University of Manitoba, 1969).

> The fact that a plebiscite is unknown in English history is the very strongest argument against it, not, as some have stated that provided there is nothing against it the inference is that the Legislature has the right to adopt such a proceeding, the result of which is to instruct the law-givers of the province to pass certain legislation. The bill will apparently be allowed to pass with the idea of getting the opinion of the people first, and then enquiring into the jurisdiction of the province afterwards. This, we submit, is a totally wrong principle of legislation and a pernicious one upon which to proceed.[22]

When the provincial election results of July 1892 favored the 'drys' by a wide margin, the government sidestepped the issue, claiming uncertainty over its jurisdictional powers. Queen's Bench justices Killam and Bain conducted the Prohibition Commission that year, but much of the evidence presented failed to establish the link between alcohol and crime that temperance advocates claimed existed.[23]

Mulock remained undaunted. When temperance advocates objected to the sale of beer at the Industrial Exposition in Winnipeg the next summer, an anonymous citizen used the occasion to take aim at Mulock's hypocrisy.

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[21] Manitoba Free Press, 20 January 1890.

[22] Western Law Times 3 (1892):37.

[23] Ibid., p. 122.

> Mr. Mulock objects to visitors to the exhibition having the opportunity to purchase a glass of beer--no whiskey being sold--but he is perfectly willing to allow his tony fellow members of the Manitoba club to buy or sell intoxicating liquors as they require. Comment is unnecessary.[24]

Despite the acrimony that such debates were capable of producing, lawyers recognized that the place of individual liberty in an organized society was at the heart of the question, which would involve yet new and untried government enforcement efforts. Arguing in favor of prohibition, Mulock pointed out,

> If it [the government] lays either a regulating, a restraining, or a prohibiting hand upon the traffic, it does no differently from what it does in regard to the adulterated goods, unwholesome meat, dangerous explosives, fire-works, obscene publications, lottery tickets and numerous other subjects of sale.[25]

Mulock regarded such restrictive reforms as a necessary part of moral reform of the "trinity of evil things," which, in addition to drunkenness included gambling and the unmentionable "social evil," prostitution. He was joined by other civic leaders, often clergymen, in a crusade to eradicate such vices, but few lawyers were as prominent in the movement for urban moral reform as he was. For lawyers who were staunch Protestant adherents and active in the affairs of their church, however, there was awareness of new forms of Christian expression in thought and social action. The 'social gospel movement' in Winnipeg in the

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[24] Manitoba Free Press, 11 July 1893.

[25] Ibid., 20 and 23 July 1894.

1890's was yet in its pioneering stage, but as historian Richard Allen argues, the inspiration of a small group of committed clergy of Methodist, Presbyterian and Anglican background, the faculty of Wesley College especially after Salem Bland arrived in 1903, and the work of prominent laymen gave it an organizational base.[26] A shift in thinking was prompted by the "social possibilities of new beginnings on the Canadian prairies,"[27] by social gospel literature and sermons, by the economic uncertainties faced by farmers, by the problems of urban growth and immigrant assimilation, and further stimulated by prohibition efforts already underway. Active involvement among prominent lawyers was not widespread, but reform efforts motivated by a desire to protect their society and improve it also did not invite opposition. When the Humane Society of Winnipeg, for example, held its first well-attended opening meeting in Grace church in 1896, seated on the platform were keynote speakers Hugh J. Macdonald and J. A. M. Aikins. The president, Rev. Canon Matheson outlined why a society of this kind was necessary, "showing the peculiar danger of a sturdy northern race contracting customs characterized by anything but a spirit of gentleness and humanity."[28] He was followed by rousing speeches given by the two lawyers, the best by J. A. M. Aikins, who took pride in his powers of eloquence.

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[26] Richard Allen, The Social Passion: Religion and Social Reform in Canada 1914-28 (Toronto, 1973), pp. 9-12.

[27] Ibid., p. 10.

[28] Manitoba Free Press, 6 March 1896.

On political questions, as in direct participation in political life, more established lawyers led the way. Hugh John Macdonald, a prominent Conservative became a Member of Parliament for Winnipeg in 1891 and served briefly as Minister of the Interior before the defeat of the federal Conservatives at the hands of Laurier's Liberals in 1896. When one of Manitoba's most prominent Liberals, Clifford Sifton, accepted the same ministry in 1896 he continued a Manitoba claim upon the office. In the provincial legislature, J. D. Cameron, who was first elected in 1892, was one of the Manitoba commissioners appointed to confer with delegates from Ottawa on the Manitoba School Question and as Attorney General after 1896, replacing Sifton, he assisted in negotiating the settlement of the question. Joining Cameron in the Greenway cabinet was lawyer Charles Mickle as Provincial Secretary. Notable as well was James Fisher, who in 1897 accompanied a federally authorized expedition through Hudson Bay, as a representative of the Manitoba government, in order to examine the practicability of completing a rail outlet to Churchill for shipping prairie grain. In municipal politics, there was little to distinguish lawyers from non-professional members of the commercial elite. They defined progress in material terms as other businessmen did and took little interest in civic improvements that did not have a monetary value attached.[29] Their representation remained proportionately about the same as in earlier periods, but of the three lawyers who became mayors of Winnipeg in these years, two were prominent 'newcomers.'[30] Of the three, former mayor R. W. Jameson shocked the city in 1899 most by the reportedly accidental discharge of a revolver into his own mouth, killing him instantly.[31]

Several of the most prominent members of the profession were engaged in notable literary and oratorical endeavors. Archer Martin, who began the work before leaving Manitoba in 1894, completed and published Hudson's Bay Company Land Tenures, described by W. L. Morton as a work of "severe legal scholarship"[32] on a tangled issue of enormous importance in early Manitoba. Another minor landmark in legal scholarship involved John S. Ewart. He had begun writing on legal topics before emigrating to Manitoba and subsequently founding and editing the Manitoba Law Journal.[33] In the late 1890's a series of articles in law journals preceded publication of An Exposition of the Principles of Estoppel in 1900, which one legal scholar claims was the "best legal scholarship done in Canada

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[29] Artibise, Winnipeg: A Social History, chap. 2.

[30] Ibid., p. 27.

[31] Manitoba Free Press, 22 February 1899.

[32] Morton, Manitoba, p. 319.

[33] He earlier published Ewart's Index of the Statutes (1874) and A Manual of Costs (1881).

between Confederation and the 1920s."[34] By the time that Ewart moved to Ottawa in 1904 and began his better known writing on the question of Canadian independence, he like Martin, represented the maturity of a legal culture capable of such exports.[35]

An occupation as well as an avocation for some, speechmaking was still cultivated as an art by more senior lawyers. Samuel Clemens was the special guest of lawyer Isaac Campbell when he came to Winnipeg in 1895 as part of his world tour.[36] Interest in giving speeches of course went beyond entertaining dignitaries. When not pleading the case of minorities, J. S. Ewart exercised his talent for elocution by giving deliberately entertaining speeches on such popular topics as the use and misuse of hypnotism and the essential altruism of the social systems of Herbert Spencer, John Stuart Mill and Edward Bellamy.[37] But in offering a critique of a speech, he gave a clear indication of the tension he experienced in presenting and listening to addresses.

> I often think that a busy man must adopt either one line or the other--either depend upon beauty or upon reason. I do not mean the elegance of language cannot be employed upon hard facts, but facts & logic naturally

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[34] R. C. B. Risk, "John Skirving Ewart: The Legal Thought," University of Toronto Law Journal 37 (1987):336.

[35] Baker, "The Reconstitution of Upper Canadian Legal Thought," pp. 291-92 suggests that a legal culture can be measured partly by its exports.

[36] Manitoba Free Press, 27 July 1895.

[37] Ibid., 16 November 1897.

> lending themselves so little to poetry & the domain of poetry being so largely confined to the aesthetic & the fanciful--facts appealing to reason, poetry to the emotions--the average man I say is unable thoroughly to equip himself both in rhetoric & logic including premises & so to be really effective must as a general rule adopt & cultivate either one method of address or the other. Of all speeches the worst I think is that in which a good chain of reasoning is dismembered by interjected bursts of rhetoric. It always reminds me of the ballet in the middle of some serious drama--useful as a filip to mental laziness but for all sober purposes an aggravated solicism [sic].[38]

Younger barristers were coming under increasing pressure to abandon such literary pursuits. One commentator claimed the "age is too practical" for a lawyer to be known as a poet, pointing out that "fluency of speech, eloquence of diction and genuine oratorical talent are useful, but not essential."[39]

To establish a substantial home, a leisurely life-style and an abundant estate for one's heirs were material aims with which all lawyers could agree but which they achieved only to varying degrees. The residential areas adjacent to the commercial centre of Winnipeg were by the turn of the century made undesirable by their smells and unsightliness. For those who could afford them, the privacy and exclusivity of Victorian suburbs with substantial homes situated on spacious grounds offered the means to a safe and healthy environment and a way to set themselves apart from lower socio-economic classes and non-British social elements. Most prominent lawyers lived in more modest homes than Stewart Tupper's ostentatious thirty room castle known as "Ravenscourt," purchased in 1900 at Armstrong's Point.[40] Nevertheless, in most cases, their residential addresses confirm the clustering and segregation by neighborhoods typical of the well-to-do middle-class in industrial cities.[41] Travel for leisure, self-improvement and recuperation were increasing in popularity also. Joseph Dubuc toured England, Ireland, Scotland, France, Switzerland, Germany and Italy in 1896 to restore his health. More prominent lawyers joined wealthy businessmen in the 1890's in establishing summer resort homes or "rural retreats," as Archer Martin called them.[42] Lake of the Woods destinations for Winnipeggers and Killarney Lake in South Western Manitoba were nearby retreats, but Banff, Alberta was also favored for its pristine beauty and therapeutic hot springs.[43]

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[38] P.A.M., MG14 C22, J. S. Ewart Papers, Box #1, Letterbook #1, Ewart to H. W. Darling, 29 March 1889.

[39] "Law and Lawyers From a Student's Point of View," The Barrister 2, no.1 (January 1896):25. A most useful explanation for the demise of this once cultivated skill is Donald M. Scott, "The Vanished Profession: Public Lecturing in Mid-Nineteenth Century America," Professions and Professional Ideologies in America, ed. Gerald L. Geisen (Chapel Hill, South Carolina, 1983).

When they can be located, the probated wills of

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[40] Sarah Carter, "Armstrong's Point: Victorian Suburb in the Heart of the City," Ne West Review 13 , no.17 (March 1988):4-5.

[41] See Henderson's Directories for 1888 to 1900 for residential addresses.

[42] Western Law Times 3 (1892):84.

[43] Morton, Manitoba: A History, p. 266; Manitoba Free Press, 30 July 1898.

Manitoba's earliest prominent lawyers reveal modest estates. Henry Clarke, who died in 1889, left a mere $800 and Daniel Carey died intestate in 1890 with an estate valued at $1,361.50. Marc Girard's estate in 1892 was valued at $9,000 and John Farquhar Bain's in 1905 was $9,461. Among the 'newcomers,' judges Lewis Wallbridge, who died in 1887, and William D. Ardagh, who died in 1893, left estates of $1,060 and $23,500, respectively. But for lawyers who died long after 1900, estate values varied from near destitution to outstanding fortunes. When he died in 1914, Colin Campbell left an estate with a net value of $138,079.68. Sir Joseph Dubuc and John N. Kirchhoffer, who both died in the same year, left estates valued at $42,254.14 and $15,500, respectively, far below the value of Campbell's estate, but James S. Tupper, who died in 1915, left an estate valued much higher, at $249,334.81.[44]

By 1900 the Manitoba legal community reflected both the potential and limitations of legal life in the province. The concentration of lawyers in Winnipeg confirmed again the metropolitan dominance of the city but change was also underway as small urban centres shared more significantly in the professional experiences and career patterns of lawyers.

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[44] P.A.M., GR170, Box 8, file #674, Henry Clarke; Ibid., file #718, Daniel Carey; Ibid., Box 13, file #1,100, Marc Girard; Ibid., Box 39, file 3,999, John Bain; Ibid., Box 6, file #490, Lewis Wallbridge; Ibid., Box 14, file #1,245, William D. Ardagh; Ibid., Box 77, file #8,009, Colin Campbell; Ibid., GR461, Box 5, Joseph Dubuc; Ibid., GR394, Box 26, file #3,137, John Kirchhoffer; Ibid., GR170, Box 80, file #8,316, James S. Tupper.

Similarly, the level of continuity with the values and attitudes transplanted by British Protestant Ontario remained strong, but as more young men in the profession received formative social and educational training in Manitoba the structure of prominence became less derivative and more a Manitoba reality. And for the first time, the record in public life, community service and various avenues of social transaction of senior established Manitoba-based lawyers served as a model for the new 'insiders,' while the status and material rewards enjoyed by the most successful lawyers, acted as incentives for legal practitioners facing the challenges of practicing law at the turn of the new century.

CHAPTER XII

CONCLUSION

Alexander McLeod, who practiced law in Morden, was able to look back over his years in the profession and penned his observations for The Canadian Law Review in 1903. He wrote, there "is a new Canada growing up west of Lake Superior in which there is being evolved a new type of Canadian."[1] Speaking for his fellow emigrés, McLeod pointed out to his readers the unfolding realization of this provincial consciousness.

> The people of Manitoba are conscious of the trend of affairs, for many of us spent our youth in the East, and we know it as well as we do the West and we realize the evolution which has taken place in ourselves; then there is the annual pilgrimage at Christmastide to the East, which keeps us in touch with existing conditions there, and every returning visitor brings back the same tale "The East is so different from the West."[2]

Offering an account of the transition he had been observing, McLeod found that Manitoba, "after being jerked into confederation," was "settled by people from Ontario who brought with them their Ontario ideas of legislation, administration of justice, civil government and social life," with the result that "civic and social life" during the "seventites and early eighties" in Manitoba were "patterned largely after that of Ontario."[3] Since that time, however, McLeod claimed, Manitoba "began to strike out into paths of her own." Arguing that unlike Ontario, which was unnecessarily "involving" her civil and social system, Manitoba was "evolving" hers. As evidence to support his claim, he cited six illustrations he had selected from "legal or quasi-legal relations of life." For one, he wrote, the real property laws were simpler. In the case of devolution of real property, that there were few amendments to the original act and very little litigation arose from disputes, McLeod took to be a great improvement over the situation in Ontario.[4] He also cited the Torrens system of land registration, which was actually adopted in both provinces, but which, he argued, "just suits Manitoba; it does not appear to suit Ontario, where the people cling to the old complex system."[5] The operation of the drainage laws of Manitoba, where those who benefited from drainage also paid for it, and where litigation was virtually unknown, McLeod contrasted with the Ontario laws, which he found "ludicrous." McLeod criticized the Ontario education system, which had separate boards of trustees for public schools and for high schools and collegiate institutes, as well as "a system of universities under separate managements." He gave high marks to the streamlined and unified system of management in place in Manitoba, commenting, "notwithstanding the fact that the whole force of denominationalism is being exerted to prevent it."[6] Claiming that the system of courts in operation in Ontario encouraged needless appeals, McLeod hoped that Manitoba would retain its simpler and more functional system. The same was true of the operation of Municipal Councils in Manitoba, which were an improvement, he claimed, over the duplication of township and county councils in Ontario. "We have no counties, they were abolished as soon as we realized that the only reason we had them was because we used to have Counties in Ontario." Continuing with the tone of a braggadocio, McLeod wrote,

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[1] "The New Canadianism," p. 542.

[2] Ibid.

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[3] Ibid., p. 543.

[4] His interest likely stemmed from firsthand knowledge, since his obituary indicates he was one of the draftsmen of the Manitoba Real Property Act. Manitoba Bar News 10 , no.6 (February 1938):529.

[5] McLeod, "The New Canadianism," p. 544. He was not completely uncritical, for he thought the administration of the Manitoba system was not well managed. Several years later he wrote an article, "The Torren's System in Ontario," Canada Law Times 29 (July 1909):695-700, in which he made disparaging remarks about the Winnipeg Land Office.

> We, of course, haven't county registrars or county attorneys or county jailers; there are only three sheriffs in the Province, and even then there is so long between hangings that they forget how and import an eastern man to do the job.[7]

With the zeal of a colonial who had achieved prominence in a provincial society and who was satisfied with that success but could not escape a deeper need to rationalize that behavior to his professional counterparts in the parent society, McLeod continued to draw effusive distinctions.[8] The law in Manitoba was also kinder to marriage and the family, he argued.

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[6] McLeod, "The New Canadianism," p. 544.

[7] Ibid., pp. 544-45.

> We recognize in Manitoba that though a woman marries, she continues to be a human being; she can hold property, do business, and even make her own will with the greatest freedom, nor is she classed in any respect with idiots and that ilk.

Pinpointing the source of their inspired view, he confirmed:

> We have never recognized that good old principle of common law that it is right and proper for the husband to chastise his wife as becometh her lord and master. We have no dower law to suggest that human nature in husbands is so debased that they would not freely provide for their wives. If such a law is necessary in Ontario it certainly is not in Manitoba.[9]

Counting himself among the first generation of builders in Manitoba who had not grown up in the province, he thought that in the legal, as well as the political, social, religious, industrial and commercial "relations of life," the community had reached an important turning point. The differences he had outlined would become more pronounced, he predicted, "when the native son of Manitoba takes control as he will in the next generation." As for his own generation, theirs was the realization that, beyond the fanciful exaggerations they might make, they had taken part in professional and extra-professional experiences that forged them into a viable, confident and permanent fixture on the Manitoba landscape by the turn of the century.

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[8] The idea that the West was regarded as a colony of "subordinate status" to central Canada and merely a proving ground for bright young men is expressed in W. L. Morton, "Clio in Canada: The Interpretation of Canadian History," Contexts of Canada's Past, ed. A. B. McKillop (Toronto, 1980), pp. 103-112.

[9] McLeod, "The New Canadianism," p. 545.

Alexander Mcleod was quite correct in sensing that an important "turning point" had been reached in Manitoba's history, and for men of the law in the province. The turn of the century in Manitoba, however, represented but a capstone on what were, in fact, a series of important turning points in the development of the Manitoba legal community and for those who achieved a measure of prominence in it. For Macleod to have understood developments more fully, it would have been necessary for him to have looked back to a time in the North West over sixty years before when Manitoba was not yet a province. When the the first lawyer arrived in 1839, laymen and clergy, who were members of and spokesmen for a variety of groups and interests, performed the rudimentary legal functions and assisted in conflict resolution, community advocacy and the administration of justice. That continued, but the arrival of legally trained men who claimed to have special knowledge and skills which set them apart was new. So was the realization that a once isolated community was being gradually drawn into the emerging world of industrial capitalism. Before 1870 there were too few lawyers present to establish a professional community. While their experiences varied greatly, lawyers were generally regarded and behaved as 'outsiders' who were not fully integrated into the society as lawyers. Their presence was in fact premature, for the economy could not support them unless they were salaried, and the presence of one legally trained individual in the courts, which were pre-adversarial, was capable of producing the kind of community resentment directed at Adam Thom or the distortions introduced by Enos Stusman. While opportunities for lawyers in the Red River Settlement were limited by local conditions, their presence did set in motion a broad process of professionalization which spelled the end to amateurism in the delivery of legal services, alerted residents to the importance and advantages of hiring legal help and indirectly underscored the need for residents to be concerned about legal or other means to protect trading, civil and property rights.

In the aftermath of the uprising in 1869-70 the horizons of opportunity available to lawyers in Manitoba expanded rapidly. Though regarded initially by some as 'intruders,' there was a great deal more for lawyers to do. Their intrusion accompanied three important developments during the decade that offered greater scope to lawyers than ever before. The most apparent change was that their legal skills were required in constructing the political and legal infrastructures in the new province. It was no accident that the first men called to be Lieutenant Governors of the province and to lead citizens through this critical time were lawyers. The coincidental arrival of new sources of mercantile capital, an expanded opportunity to ship agricultural exports and the introduction of new market concepts signalled that there would also soon be enough business to support viable legal practices. For the cadre of French Canadian lawyers, the diminishing demographic strength and influence of the Francophone and Métis population in relation to a rapidly increasing British Ontarian sector lent both a sense of urgency and mission to their efforts to respond to the legal and political needs of their own constituents.

During the seventies, lawyers took their first steps to develop an organizational base to ensure their legitimate 'professional status.' By late in 1877 the legal profession had established an independent and permanent Law Society to serve as a focal point for lawyers and to actively protect the exclusivity of legal services lawyers provided. On hand to assist in designing and managing the court system, lawyers captured and dominated this legal space in a way that had not been possible in the previous era. The courts soon became an important public showcase for the legal talent of both the bench and the bar and was an essential adjunct to the status they claimed and the image they wished to convey.

At the same time, lawyers were active in more public avenues of integration as well. The disproportionately large numbers of lawyers who received political appointments or who stood for elected political office not surprisingly greatly influenced the relationship with the federal government, the delineation of local political issues, and the vigor of electoral partisanship at all levels. As the example of Joseph Dubuc illustrates, lawyers could not depend on the local economy for sufficient fee-producing work, therefore, a degree of diversification was essential. In addition to providing legal counsel to Bishop Taché, Dubuc also provided translating services to the provincial government and received government stipends as a member of the government and as a commissioner. As was the case with other lawyers, Dubuc became intimately aware of the legal difficulties surrounding various kinds of river lot claims, ancillary claims involving hay cutting and other privileges and claims concerning promised Métis reserve lands and scrip payments. The confusion and irregularities associated with land claims was an exceedingly vital economic avenue of integration for these professional men. By all accounts, they exploited the question and the uncertainties in ways that did little to protect the rights of original residents. While Dubuc appeared to have been an exception, most lawyers took full advantage of a rapacious land grab and the accompanying land speculation throughout the province. Often this was with the complicity of the higher courts, with Chief Justice Wood leading the way; a fact confirmed later by an inquiry into the alienation of infant lands. By the following decade lawyers were exploring a broader spectrum of avenues of expectant capitalism, but land continued to fuel the speculative motor.

During the first decade following the permanent organization of a Law Society, rapid changes, especially in the economy, put a premium on a lawyer's ability to adapt. A land boom in the early eighties acted as a magnet for lawyers; when the boom collapsed competition among lawyers increased. The daily social transactions they engaged in, both in professional and public circles, were chances for purposeful interaction. Lawyers who remained or became prominent demonstrated the capacity to use such brokering opportunities to enhance their careers. In professional life, the example of Colin Campbell reveals the importance of influential patrons, skilled or well-placed associates, and loyal allies. They were sometimes as important as raw ambition or outstanding talent although these were not negligible factors either. In the relatively fluid and inchoate state of legal practice in Manitoba during the eighties, the combination and dissolution of partnerships was an ongoing process. Professional reputations were won or damaged in law offices and courts and in the atmosphere of conviviality surrounding their social and recreational activities. While the tenuous bonds of professional community were being forged, men in leadership positions in the profession, like Benchers, enjoyed the chance to broaden the corporate impact of their influence by brokering on behalf of other lawyers. Influencing standards for admission and exclusion, encouraging suitable and sufficient selections to the bench in order to ensure the smooth and efficient operation of the courts and handling routine matters of finance and discipline for their professional peers extended their purview. For most lawyers, unlike John S. Ewart who had a published forum for expressing and shaping opinions, organized gatherings, both ceremonial and social, were occasions for emphasizing professional attitudes and confirming their standing among other lawyers.

Brokering was in fact a natural extension of the nature of their occupation. As "go-betweens" in a new and expanding field of business opportunity, the benchmarks for success demanded that business contacts be constantly sought and nurtured, that substantial solicitorships for corporate firms in Central Canada be won, that appearances in the highest courts in important civil litigation be made and that private investments be well-placed. The experiences of Colin Campbell are instructive since his business decisions over the decade, in what was an agricultural-mercantile-service-economy, suggest a pattern with a metaphorical ring. Like other newcomers to the city of Winnipeg at the height of its real estate boom, he was at first drawn to land speculation and conveyancing. However, Campbell was able to weather financial setbacks and the increased competition from lawyers in the aftermath of the collapse of the boom because of the litigation and collection work he performed for the mortgage, railway and insurance companies for which he was solicitor. As his competence in real property became known, referrals came his way, requiring appearances in Brandon and Regina and consultations with clients in

Hamilton, Toronto and Montreal. Responding to the undeveloped state of financial services in smaller urban centers was one way of realizing a return on investments. In Campbell's case, he and a partner formed a private banking venture in Boissevain.

Other brokering activities had a much broader impact. Lawyers who assisted in introducing the Torrens System of land registration, for example, played a facilitative role in simplifying land transactions. Sometimes, however, as was the case with E. M. Wood and his associates in Winnipeg, business transactions carried out as a public trust were lucrative but fraudulent. Establishing and maintaining political contacts at a time when political parties were forming was also useful for those who needed to enhance their reputation through the visibility guaranteed by an elected or appointed office or who wished to be remembered and consulted in the process of granting political favors. Colin Campbell understood the value of this type of brokering, as did his western counterparts from Brandon, Thomas Mayne Daly and Clifford Sifton. Choosing to wait and to prepare for a propitious entry into political life, these men were keenly aware that there were both drawbacks and compensations in standing for office. Lawyers like Campbell did not separate their professional and social worlds. Engaging in leisure for self-improvement, joining a church or a voluntary organization, or participating in 'manly' sports usually involved an intermingling of aims in order to open the door for business contacts or simply to remind others of their professional stature.

As the closing decade of the nineteenth century began, Manitoba's lawyers were already beginning to emphasize the consolidation of their occupational place in the province. The theme of consolidation was apparent as well in other areas of Manitoba life, as the pioneer phase of the province's settlement process was complete. For Archer Martin and other lawyers, ensuring the greatest measure of autonomy as a professional body was at the core of their concerns about exercising control over discipline, setting standards of ethical behavior, restricting entry, delineating the exclusivity of certain legal tasks, disseminating legal information, ensuring that legal education remained under the control of the Society and that the Benchers were responding to members' concerns. The impulse to conserve was also evident in efforts to preserve and defend the public image of lawyers. The conservative style of senior members of the bar which served to invoke group standards to emulate, the efforts to maintain esteem and dignity for judicial appointees, concerns expressed about the utility and fairness of Q.C. appointments and a growing sensitivity to community expectations were all part of this mood of consolidation.

While lawyers were consolidating, they were also faced with the challenges of modernity. Social changes, growing societal complexity and the changing needs of business clients were forcing lawyers throughout North America to reassess the role that members of their occupation would play in the coming century. Would they emphasize the gentleman-advocate of the nineteenth century or the legal counsellor-specialist of the coming century? The contrasting styles of Attorneys General Joseph Martin and Clifford Sifton personify the shift that was underway, even in Manitoba. Brash, combative and flamboyant qualities were gradually giving way to rational, organized and business-like approaches. Lawyer responses were most evident in the formation of larger firms. It was also becoming less possible to be a lawyer-politician; to be both meant that practicing law suffered, unless allowances were made to overcome this. And in the area of legal reforms, arguments which favored efficiency, simplification or uniformity captured notice if not responses.

The legal profession had grown from one lawyer in 1840 to approximately one hundred fifty by 1900, with practitioners about equally divided between Winnipeg and the remainder of the province.[10] At the same time that the dominant tone of lawyer responses to conditions in Manitoba had changed, there were also notable changes in the structure of professional prominence. The structural consequence of the presence of a substantial number of 'firstcomers' during the seventies was that lawyers had gained their first concrete foothold in the province. To be expected, there were those who came on the strength of political or judicial appointments, but otherwise the recruitment pattern was quite complex. In terms of social origins, an outstanding characteristic of the cohort was the prominence of a French Canadian contingent. The educational backgrounds and legal education of these lawyers was largely derivative of experiences in Ontario and Quebec. Senior appointees were normally married with well-established households, but the greatest number were younger men who were bachelors. Reflecting the opportunities available and the necessity to claim a measure of omnicompetence and to form strategic associations, the level of direct political participation was unusually high compared to later years.

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[10] See Henry J. Morgan, ed., Canadian Legal Directory: A Guide to the Bar and Bench of the Dominion of Canada (Toronto 1878); Louis H. Taché, A Legal Handbook and Law-List for the Dominion of Canada A Book of Parliamentary and General Information (Toronto, 1888); and H. Cartwright, ed., The Canadian Law List (Hardy's) (Toronto, 1900).

After 1878 a second wave of 'newcomers' joined their ranks and as a result reshaped the structure of prominence. The 'newcomers,' the majority of whom were drawn to Manitoba by the economic potential of a vibrant real estate market, swelled the ranks of the profession. Perhaps the most noteworthy discontinuity from the earlier era was that in relative numbers, the French Canadian contingent of lawyers was overwhelmed by the dominance of lawyers who represented the values and assumptions of Protestant Ontario. In terms of intergenerational social mobility, it appears that most 'newcomers' were either maintaining or improving upon their parent's status, while a significant segment, including notables like J. A. M. Aikins, Hugh John Macdonald and the sons of Sir Charles Tupper, enjoyed the advantage of having highly placed fathers and displayed the importance of political and professional elite linkages in their choice of marriage partners. For most of the cohort, the law was their first occupational choice, few having had any significant pre-law employment. As the province developed a wide variety of voluntary clubs, fraternities and athletic organizations, the 'newcomers' were very much a part of them.

Generally speaking, the post-1888 'latecomers' to the profession confirmed the structures of prominence established earlier. But there were important differences also. While most were not born in Manitoba, the largest number had grown up in the province, many attending denominational colleges affiliated with the University of Manitoba and receiving their articling experience under the auspices of the Law Society of Manitoba. Manitoba was home for them and unlike earlier lawyers, they would find their models for professional style and status among senior lawyers who themselves were once 'newcomers,' but who by the turn of the century had become 'insiders.' While his enthusiasm requires qualification, Alexander Macleod was perhaps partially correct in claiming that "a new type of Canadian" was being evolved in the West. For after 1900 there was no question that Manitoba's lawyers were mainly native sons of the province, but their formative experiences in the law still very much reflected models of professional training and practice derived from Ontario and the United States and brought to Manitoba by their legal mentors. The development of Manitoba's legal community had in some respects been part of a unique Manitoba reality but it was never divorced from the essential changes required in practicing law in North America at the turn of the century.

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APPENDIX 1

MANITOBA LAW SOCIETY

ATTORNEYS' ROLL

OATH OF ALLEGIANCE

I do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria as lawful Sovereign of the United Kingdom of Great Britain and Ireland and of this Province dependent on and belonging to the said Kingdom and that I will defend Her to the utmost of my power against all traitorous conspiracies and attempt whatever which shall be made against Her Majesty's Person Crown and Dignity and that I will do my utmost endeavour to disclose and make known to Her Majesty Her Heirs or Successors all treasons or traitorous conspiracies and attempts which I shall know to be against Her or any of them and all this I do swear without any equivocation mental evasion or secret reservation. So Help me God.

NUMBERS TO SIGN BY YEAR

YEAR	ATTORNEYS	BARRISTERS
1879		
1880	3	10
1881	9	12
1882	134	73
1883	23	16
1884	22	21
1885	13	3
1886	13	17
1887	5	6
1888	10	6
1889	11	12
1890	7	8
1891	11	8
1892	9	7
1893	11	5
1894	9	3
1895	7	5
1896	12	8
1897	10	4
1898	5	9
1899	12	9
1900	14	12

APPENDIX 2

EXAMINATION FOR ADMISSION TO ARTICLES, ONTARIO

Geography, English History, and Grammar

1. Draw a map of that part of Europe where war has lately been going on, shewing the name and relative position of the districts engaged in it.
2. Define latitude and longitude.
3. Name the principal mountains of Asia.
4. Describe the position of the Amazon, the Nile, and the Volga, respectively.
5. Who was the first king of the House of Hanover, and what was his title to the throne of England?
6. Name the sovereigns of the Plantegenet line in their order.
7. What were the principal events of the reign of Henry VII?
8. What were the Norman Conquest, Heptarchy, and Commonwealth, respectively?
9. What are the parts of speech?
10. Define English Grammar.
11. Parse the words in

    'Him the Almighty Power
    Hurled headlong flaming from the ethereal sky'
    Milton.
12. Write a short essay on 'The Steam Engine.'

Mathematics, & C.

1. Reduce 4 cwts. 3 grs. & 7 lbs. to the decimal of a ton.
2. Find the square root of 123,456 to three places of decimals.
3. Add together 1/2, 2/3, 3/4, and 4/5.
4. What is the interest of $1,450 for 194 days at 7 1/4 percent?
5. Find the greatest common measure of $2x^2 + 2x - 3$ and $3x^2 - 4x - 1$.
6. Simplify the expression $\frac{5}{2 - 3y} + \frac{3}{2 + 3y}$.
7. Find the value of x in $ax + b = mx + n$.
8. Find the value of x in $\frac{5x}{9} - 8 = 74 - \frac{7x}{12}$.
9. Find the value of x in $x + \frac{1}{x} - \frac{5}{2} = 0$.
10. Prove that right lines which parallel to the same right line, are parallel to each other.
11. Draw a right line from a given point, either without or in the circumference, which shall touch a given circle.